1817

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 151.

WILLIAM D. HALE, AS RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE DISTRICT COURT OF HENNEPIN COUNTY, MINNESOTA, PLAINTIFF IN ERROR,

vs.

L. V. LEWIS, THE TREASURER OF THE STATE OF WISCONSIN, AND M. C. CLARKE, RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE CIRCUIT COURT OF DANE COUNTY, WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

FILED [illegible]

([illegible])

18173

(17,552.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 151.

WILLIAM D. HALE, AS RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE DISTRICT COURT OF HENNEPIN COUNTY, MINNESOTA, PLAINTIFF IN ERROR,

vs.

L. V. LEWIS, THE TREASURER OF THE STATE OF WISCONSIN, AND M. C. CLARKE, RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE CIRCUIT COURT OF DANE COUNTY, WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

INDEX.

	Original	Print.
Petition for writ of error	1	1
Writ of error	8	4
Citation	11	6
Service of citation	13	6
Assignment of errors	16	8
Caption	23	11
Transcript from circuit court for Dane county	24	12
Notice of appeal	24	12
Waiver of undertaking on appeal	25	13
Summons	26	13
Complaint	27	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 28, 1900.

	Original.	Print
Restraining order	33	17
Affidavit of service of summons, &c.	35	18
Answer of Sewell A. Peterson, State treasurer	36	19
Reply of plaintiff to counter-claim of Peterson	42	22
Stipulation to submit, &c.	44	23
Order appointing receiver, &c.	46	24
Notice of order appointing receiver	51	27
Affidavit of service of order appointing receiver	52	27
Notice of appearance for American Savings and Loan Association	53	28
Petition of William D. Hale to be made party defendant	54	29
Order making William D. Hale party defendant, &c.	57	31
Answer of William D. Hale, receiver, &c.	59	32
Exhibit A—Articles of incorporation of the American Building and Loan Association	78	43
B—Amended articles of incorporation of the American Building and Loan Association, July 31, 1888	79	45
C—By-laws of the American Building and Loan Association, July 31, 1888	81	48
D—Revised by-laws of the American Building and Loan Association, March 13, 1890	86	56
E—Revised by-laws of the American Building and Loan Association, June 12, 1891	91	64
F—Revised by-laws of the American Savings and Loan Association, May 14, 1892	99	78
G—Affidavit of president and secretary of American Building and Loan Association, August 29, 1891; September 20, 1892, and December 8, 1893	105	91
Letter of examiner to treasurer, December 11, 1893	109	94
H—List of mortgages delivered to State treasurer prior to July 11, 1889	110	95
I—List of mortgages delivered to State treasurer between July 11, 1889, and January 1, 1894	111	96
J—List of mortgages delivered to State treasurer subsequent to January 1, 1894	113	97
K—Form of bond	114	98
L—Form of mortgage	116	99
M—Stock loans made to Wisconsin shareholders	120	101
N—List of real-estate mortgages given by Wisconsin shareholders	121	102
O—Form of stock certificate	122	102
O^1—Form of stock certificate	123	104
O^2—Form of stock certificate	124	106
O^3—Form of stock certificate	125	108
O^4—Form of stock certificate	126	110
O^5—Form of stock certificate	127	112
O^6—Form of stock certificate	128	113
O^7—Form of stock certificate	129	114
Demurrer of M. C. Clarke, receiver, to counter-claim of Hale, receiver	131	116

	Original.	Print
Demurrer of plaintiff to counter-claim of Hale, receiver	132	116
Demurrer of Peterson, treasurer, to counter-claim of Hale, receiver	133	117
Order sustaining demurrer of Clarke, receiver	134	118
Plaintiff	135	118
Peterson, treasurer	136	119
Notice of order sustaining demurrer of Clarke, receiver	137	120
Plaintiff	139	121
Peterson, treasurer	141	123
Notice of appeal	143	124
Undertaking on appeal	146	125
Order as to record on appeal	148	126
Certified copy of judgment of supreme court of Wisconsin, January 11, 1898	150	127
Order for judgment	152	129
Judgment	153	129
Stipulation as to record on appeal	154	130
Order as to record on appeal	155	131
Clerk's certificate	156	131
Stipulation waiving printing and submitting cause	158	132
Assignment of errors	160	133
Order granting motion to submit without printing	163	134
Judgment	164	135
Opinion of Winslow, J.	165	135
Opinion of Pinney, J., on first appeal	166	136
Consent to substitute attorneys for Clarke, receiver	188	149
Order to substitute attorneys for Clarke, receiver	189	150
Clerk's certificate	190	150

1 STATE OF WISCONSIN:

Supreme Court.

L. V. LEWIS, Respondent,
vs.
AMERICAN SAVINGS & LOAN ASSOCIATION and S. A. Peterson, Treasurer of the State of Wisconsin, Respondents; William D. Hale, as Receiver of the American Savings & Loan Association, Appointed by the District Court of Hennepin County of the State of Minnesota, Appellant.

Petition for Writ of Error.

To the Honorable John B. Cassoday, chief justice of the supreme court of the State of Wisconsin:

The petition of William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, Minnesota, respectfully shows:

That on the 26th day of September, 1899, a final judgment was entered in said supreme court, the same being the tribunal having jurisdiction under the laws of the said State of Wisconsin to render final judgment in all proceedings of such nature, in an action or proceeding wherein this petitioner was appellant and L. V. Lewis, S. A. Peterson, as treasurer of the State of Wisconsin, and M. C. Clarke, as receiver of the American Savings & Loan Association, appointed by the circuit court of Dane county, Wisconsin, were respondents.

That in and by said action or proceeding, wherein said final judgment was entered, it was made to appear that the American Savings & Loan Association was a mutual building association, or-
2 ganized and doing business under the laws of the State of Minnesota, and that said corporation having become insolvent, this petitioner was regularly and duly appointed its receiver by the district court of Hennepin county, Minnesota, for the purpose of collecting the assets of said association and reducing them to possession and distributing them equitably among all the shareholders of said association wheresoever they may reside.

That on the 19th day of April, 1899, there was enacted and approved by the law-making power of the State of Wisconsin a law which provided, among other things, the following:

"No foreign building and loan association shall issue its shares, receive moneys, or transact any business in this State unless such association shall have and keep on deposit with the State treasurer of Wisconsin, in trust for the benefit and security of all its members in this State, securities of the actual cash value of one hundred thousand dollars of the kind mentioned in section 2 of this act, to be approved and accepted by said State treasurer, and held in trust as aforesaid, until all shares of such association held by residents of this State shall have been fully redeemed and paid off by such asso-

ciation, and until its contracts and obligations to persons and members residing in this State shall have been fully performed and discharged."

That at the time of the passage of said act said association had 162 shareholders in the State of Wisconsin, who had become such shareholders prior to the passage of said act, and who were at said time and had been for a long time prior thereto making their regular stated payments to said association in maturity of the stock subscribed for by and issued to them, and who were at the time of the commencement of this action shareholders of said association and citizens of the State of Wisconsin.

That at the time of the enactment of said law and at the time of the commencement of this action said association had shareholders who were citizens and residents of thirty-five different States; that all of said shareholders, including those residing in the State
3 of Wisconsin, had, under their contracts of membership in said association, like rights, privileges, immunities, and liabilities; that said 162 shareholders subscribed for their stock in the same manner and received certificates thereof with like conditions as did all other shareholders of said association wheresoever residing.

That after the enactment of said law above quoted, and prior to the appointment of this petitioner as receiver, the officers and directors of said association, in compliance with the provisions and requirements of said law, deposited with the State treasurer of Wisconsin mortgages belonging to said association of the aggregate value of $145,234; that the shareholders of said association had no knowledge whatever of the delivery of said mortgages to said State treasurer by said officers, nor did they at any time consent thereto or acquiesce therein.

That in this action the circuit court of Dane county, Wisconsin, has appointed a receiver for said association, and the State treasurer of Wisconsin has, pursuant to the order of said circuit court, delivered said mortgages to said receiver, and that said receiver is, under and pursuant to the directions of said court, collecting said mortgages, and has been ordered and directed by said court to distribute the avails thereof to the shareholders of said association residing in the State of Wisconsin.

That the avails of said mortgages will be sufficient to pay to said shareholders residing in Wisconsin dollar for dollar of the amount which they have paid in to said association upon their stock.

That all of the remainder of the assets of said association, which are in the hands of this petitioner as receiver, will not be sufficient to pay to the other stockholders in said association residing
4 in all of the other States a sum to exceed forty cents on the dollar of the amount which they have paid in to said association upon their stock.

And this petitioner further shows that in said proceeding it was claimed and contended by this petitioner that the construction placed upon said law by the circuit court of Dane county and its receiver would have the effect of making the shareholders in said

association residing in Wisconsin preferred shareholders; would give to them a larger proportion of the assets of said insolvent association than by their contracts of membership in said association they agreed to accept in event said association should become insolvent, and give to the shareholders in said association residing in the other States a less proportion of the assets of said insolvent association than by their contracts of membership it was agreed that they should receive in event said association became insolvent.

And this petitioner further shows that in said proceeding it was further claimed and contended by this petitioner that said law was and is inoperative and void in so much as the same is in conflict with section 2 of article 4 of the Constitution of the United States, which provides that citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, whereas under the provisions of said law, as the same is enforced by said court, the citizens of Wisconsin, who are shareholders in said association, are given privileges and immunities which are denied the citizens of other States who are shareholders in said association.

And this petitioner further claimed and contended in said proceeding that said enactment was also contrary to section 10 of article 1, which provides that no State shall pass any law impairing the obligation of contracts, in so much that said law impaired the obligation of the contracts entered into by the 162 shareholders in said association residing in the State of Wisconsin, and the obligation of the contracts entered into by all of the other shareholders of said association residing in the other States when they each became members of and shareholders in said association, in that the said 162 shareholders were, by said law, made preferred creditors and given a priority in the distribution of the assets of said association when it became insolvent.

And this petitioner further shows that in said proceeding it was shown that but for said law the shareholders in said association residing in the State of Wisconsin could not and would not receive any larger proportion of the assets of said insolvent association than was received by the shareholders residing in the other States, but the final judgment and decree of said supreme court of Wisconsin was in favor of the claim of the respondents in said proceeding made upon and under the provisions of said law and against the claim of this petitioner that said law was invalid.

All of which claims and decisions more fully appear by the record of said proceedings now remaining in said supreme court.

Wherefore, inasmuch as your petitioner believes there was manifest error in the said decision of said court against the said several claims of this petitioner, as hereinabove set forth, and in the final judgment in said action or proceeding, which is to the great damage of this petitioner, this petitioner prays that your honor will examine the records in said supreme court of Wisconsin in that behalf, and allow this petitioner a writ of error, to the end that said judgment and record may be brought before the Supreme Court of

the United States, agreeable to the laws of the United States in that behalf enacted.

WILLIAM D. HALE.

HAY & VAN CAMPEN,
Attorneys for Petitioner.

6 STATE OF MINNESOTA, } ss:
County of Hennepin, }

William D. Hale, being duly sworn, on oath states that he is the receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, Minnesota; that he has subscribed his name to the above and foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true to the knowledge of deponent.

WILLIAM D. HALE.

Subscribed and sworn to before me the 11th day of October, 1899.

[Notarial Seal, Hennepin Co., Minn.]

J. H. VAN CAMPEN,
Notary Public, Hennepin County, Minnesota.

7 [Endorsed:] Original. State of Wisconsin, supreme court. L. V. Lewis, respondent, *vs.* American Savings & Loan Association *et al.*, appellant-. Petition for writ of error. Filed Oct. 13, 1899. Clarence Kellogg, clerk of supreme court, Wis.

8 In the Supreme Court of the United States.

WILLIAM D. HALE, as Receiver of the American Savings & Loan Association, Appointed by the District Court of Hennepin County, Minnesota, Plaintiff in Error,

vs.

L. V. LEWIS, S. A. PETERSON, Treasurer of the State of Wisconsin, and M. C. Clarke, Receiver of the American Savings & Loan Association, Appointed by the Circuit Court of Dane County, Wisconsin, Defendants in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of the State of Wisconsin, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between L. V. Lewis, plaintiff and respondent, and The American Savings & Loan Association and S. A. Peterson, treasurer of the State of Wisconsin, defendants and

respondents, and William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, in the State of Minnesota, intervenor and appellant, wherein was drawn in question the validity of a statute and an authority exercised under the said State, on the ground of
9 their being repugnant to the Constitution and laws of the United States, and the said decision was in favor of such their validity, and manifest error hath happened, to the great damage of the said William D. Hale, as receiver, as by his complaint appears, we, being willing that such error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you may have the same at said place before the justices of said court on the 13th day of November next, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 13th day of October, A. D. 1899.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. W. OAKLEY,
Clerk of the Circuit Court of the United States of America for the Western District of Wisconsin,
By F. D. REED, *Deputy.*

The foregoing writ allowed by me this 13th day of October, A. D. 1899, in order to give the Supreme Court of the United States an opportunity to determine the question of jurisdiction, although I have grave doubt as to whether it should be issued.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court of Wisconsin.

10 [Endorsed:] Original. In the Supreme Court of the United States. William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, Minnesota, plaintiff in error, *vs.* L. V. Lewis *et al.*, defendants in error. Writ of error. Filed Oct. 13, 1899. Clarence Kellogg, clerk of supreme court Wis.

STATE OF WISCONSIN, } *ss:*
Supreme Court, }

The return to the within writ appears by the schedule hereto annexed.

The return of the justices of the supreme court of the State of Wisconsin.

CLARENCE KELLOGG, *Clerk.*

11 In the Supreme Court of the United States.

WILLIAM D. HALE, as Receiver of the American Savings & Loan Association, Appointed by the District Court of Hennepin County, Minnesota, Plaintiff in Error,

vs.

L. V. LEWIS, S. A. PETERSON, Treasurer of the State of Wisconsin, and M. C. Clarke, Receiver of the American Savings & Loan Association, Appointed by the Circuit Court of Dane County, Wisconsin, Defendants in Error.

UNITED STATES OF AMERICA:

The President of the United States to L. V. Lewis, the treasurer of the State of Wisconsin, and M. C. Clarke, receiver of the American Savings & Loan Association, appointed by the circuit court of Dane county, Wisconsin, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the supreme court in the State of Wisconsin, in an action wherein William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, Minnesota, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable John B. Cassoday, chief justice of the supreme court of the State of Wisconsin, this 13th day of October, in the year of our Lord 1899.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court of the State of Wisconsin.

12 [Endorsed:] Original. In the Supreme Court of the United States. William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, Minnesota, plaintiff in error, *vs.* L. V. Lewis *et al.*, defendants in error. Citation. Filed Oct. 13, 1899. Clarence Kellogg, clerk of supreme court Wis. Due service of the within citation is admitted this 13th day of October, 1899. Erdall and Swansen, att'ys for L. V. Lewis, def't in error, & M. C. Clark, rec'r, def't in error. E. R. Hicks, att'y gen'l of the State of Wisconsin, att'y for State treasurer, def't in error.

13 Know all men by these presents that we, William D. Hale, as receiver of the American Savings & Loan Association of Minneapolis, Minnesota, as principal, and The American Surety Co. of New York, as surety, are held and firmly bound unto L. V. Lewis, S. A. Peterson, treasurer of the State of Wisconsin, and M. C. Clarke, receiver of the American Savings & Loan Association, appointed by the circuit court of Dane county, Wisconsin, in the full and just

sum of five hundred dollars ($500), to be paid to the said L. V. Lewis, S. A. Peterson, the treasurer of the State of Wisconsin, and M. C. Clarke, receiver of the American Savings & Loan Association, their attorneys, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our executors, administrators, successors, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of October, A. D. 1899.

Whereas in the supreme court of the State of Wisconsin, in a suit pending in said court between L. V. Lewis, respondent, and The American Savings & Loan Association, S. A. Peterson, as treasurer of the State of Wisconsin; M. C. Clarke, as receiver of the American Savings & Loan Association, appointed by the circuit court of Dane county, Wisconsin, respondents, and William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, Minnesota, appellant, judgment was rendered against the said William D. Hale, whereby a certain judgment of the circuit court of Dane county, Wisconsin, dismissing said action as to said William D. Hale, and for the costs and disbursements of said suit, was affirmed by said supreme court and awarding judgment against the said Hale for the costs and disbursements of said proceeding, and the said Hale, appellant, having obtained a writ of error and filed the same in the clerk's office of the said supreme court to reverse the judgment in said court, and a
14 citation directed to said L. V. Lewis, S. A. Peterson, and M. C. Clarke, the respondents aforesaid, citing and admonishing them to be and appear at the Supreme Court of the United States, to be held at Washington, on the 13th day of November next:

Now, the condition of the above obligation is such that if the said Hale shall prosecute said writ of error to effect and answer and pay all damages and costs if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

WILLIAM D. HALE, [SEAL.]
As Receiver of the American Savings & Loan Association.
[SEAL.] AMERICAN SURETY CO. OF N. Y.,
By E. C. COOKE, *Res. Vice-President.*
Attest: C. R. FOWLER, *Res. Assistant Secretary.*

Signed, sealed, and delivered in presence of—
C. H. VAN CAMPEN.
WM. B. HENDERSON.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Before me, C. H. Van Campen, a notary public within and for the county and State aforesaid, on this 16 day of October, A. D. 1899, personally appeared William D. Hale, the receiver of the American Savings & Loan Association, known to me to be such re-

ceiver and the person named in and who subscribed the foregoing bond as principal, and that he duly acknowledged the same to be his free act and deed as such receiver.

C. H. VAN CAMPEN,
[SEAL.] *Notary Public, Hennepin County, Minn.*

15 [Endorsed:] Copy. In the Supreme Court of the United States. William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, Minnesota, plaintiff in error, *vs.* L. V. Lewis *et al.*, defendants in error. Bond. Approved as to form and sufficiency this 17th day of October, 1899. John B. Cassoday, chief justice of the supreme court of the State of Wisconsin.

16 In the Supreme Court of the United States.

WILLIAM D. HALE, as Receiver of the American Savings & Loan Association, Appointed by the District Court of Hennepin County, Minnesota, Plaintiff in Error,

vs.

L. V. LEWIS, S. A. PETERSON, Treasurer of the State of Wisconsin, and M. C. Clarke, Receiver of the American Savings & Loan Association, Appointed by the Circuit Court of Dane County, Wisconsin, Defendants in Error.

Writ of error to the Supreme Court of the United States.

Assignment of Errors.

The said plaintiff in error, by Eugene G. Hay, his attorney, comes and says that in the record and proceedings in the above-entitled suit in the supreme court of the State of Wisconsin there is manifest error in this:

I.

That said court held the statute of Wisconsin entitled "An act regulating building and loan associations," being chapter 525 of the Laws of Wisconsin for the Year 1889, approved the 19th day of April, 1889, in so far as said law authorized the securities deposited under its provisions with the State treasurer of Wisconsin by a foreign building association, when said association becomes in-

17 solvent, to be distributed to the shareholders of said association who are residents in and citizens of Wisconsin until their claims arising out of their stock in said association are paid in full before the shareholders in said association who are residents in and citizens of other States can be paid anything out of said securities upon their claims arising out of their stock in said association, to be valid and not in conflict with the provisions of the Constitution of the United States, whereas the said act is invalid and contrary to the provisions of the Constitution of the United States on each of the following grounds:

First. That in so authorizing such distribution of said securities said act is contrary to section 2 of article 4 of the Constitution of

the United States, in that it thereby grants privileges and immunities to the citizens of Wisconsin who are shareholders in said foreign building association which are denied to the citizens of the several States, other than the State of Wisconsin, who are shareholders in said association.

Second. That in authorizing such distribution of said securities said act is contrary to the provisions of section 10 of article 1 of the Constitution of the United States, in that it impairs the obligation of a contract in this, that it impairs the obligation of the contracts of membership entered into by each of the shareholders of said foreign building association at the time they became members of and shareholders in said association.

Third. That in authorizing such distribution of said securities said act is contrary to the provisions of section 10 of article 1 of the Constitution of the United States, in that it impairs the obligation of a contract in this, that it impairs the obligation of the contract of 162 shareholders in said association residing in and citizens of the State of Wisconsin who were such shareholders
18 before the passage of said act, in that it gives to them larger rights and interests than they acquired under their contracts of membership when they became members of and shareholders in said association.

II.

Said court held that the securities deposited with the State treasurer of Wisconsin by the officers of the American Savings & Loan Association should, under the provisions of a certain statute of Wisconsin entitled "An act regulating building and loan associations," being chapter 525 of the Laws of Wisconsin for the Year 1889, approved the 19th day of April, 1889, when said association became insolvent, be distributed to the shareholders in said association residing in and who are citizens of the State of Wisconsin until they should receive dollar for dollar of the amount paid in upon their stock in said association before anything should be paid out of said securities to the shareholders in said association residing in and citizens of other States, when said shareholders residing n and citizens of other States could receive out of the remaining assets of said association a sum not to exceed 40 cents upon the dollar of the amount which they had paid in upon their stock in said association. In this the said court erred for the reason that said law is void and in conflict with section 2 of article 4 of the Constitution of the United States, in that it grants privileges and immunities to the citizens of Wisconsin which are denied to citizens of other States, and in conflict with section 10 of article 1 of the Constitution of the United States, in that it impairs the obligation of a contract.

19 III.

The said court held that under and pursuant to the provisions of a certain statute of Wisconsin entitled "An act regulating building and loan associations," being chapter 525 of the Laws of Wiscon-

sin for the Year 1889, approved the 19th day of April, 1889, shareholders residing in and who are citizens of Wisconsin are entitled to priority in payment out of the securities of the American Savings & Loan Association theretofore deposited with the State treasurer of Wisconsin of their claims arising out of their stock in said association when said association became insolvent. In this the said court erred for the reason that said law is void and in conflict with section 2 of article 4 of the Constitution of the United States, in that it grants privileges and immunities to citizens of Wisconsin which are by it denied to the citizens of the other States, and in conflict with section 10 of article 1 of the Constitution of the United States, in this, that it impairs the obligation of the contracts entered into between the American Savings & Loan Association and the 162 shareholders of said association residing in and citizens of Wisconsin who became such shareholders prior to the passage of said law, and impairs the obligation of the contracts entered into by said association with all the shareholders thereof in whatsoever State residing, and impairs the obligation of the contracts entered into by all the shareholders of said association with each other upon becoming shareholders in said association, and impairs the obligation of the contracts entered into between the shareholders of said association and the State of Minnesota.

IV.

As a result of said decision 162 shareholders, residing in and citizens of the State of Wisconsin, who were such shareholders at the time of the passage of a certain statute of the State of Wisconsin entitled "An act regulating building and loan associations," being chapter 525 of the Laws of Wisconsin for the Year 1889, approved the 19th day of April, 1889, will, by virtue of the provisions of said law, receive out of the assets of the insolvent American Savings & Loan Association dollar for dollar of the amount which they paid for their stock in said association, whereas the shareholders of said association residing in and citizens of other States will not receive to exceed 40 cents upon the dollar of the amount paid by them for their stock in said association; that the said court erred in not holding that the said law was void and in conflict with section 2 of article 4 of the Constitution of the United States, in that it grants privileges and immunities to the citizens of Wisconsin not granted to citizens of other States, and in conflict with section 10 of article 1 of the Constitution of the United States, in that it inpairs the obligation of the contracts of said 162 shareholders residing in and citizens of Wisconsin, and of the contracts of all the other shareholders residing in and citizens of Wisconsin, and of the contracts of all the other shareholders in said association, and the contracts made with all of said shareholders in said association by the State of Minnesota in granting to said association its charter.

V.

In deciding said case said court gave effect to a certain statute of Wisconsin entitled "An act regulating building and loan associa-

tions," being chapter 525 of the Laws of Wisconsin for the Year 1889, approved the 19th day of April, 1889. In this the said court erred for the reason that said law, in so far as the same is applicable to the facts of this case, is void and in conflict with section 2 of article 4 of the Constitution of the United States, in that it grants privileges and immunities to the citizens of Wisconsin not
21 granted to citizens of other States, and in conflict with section 10 of article 1 of the Constitution of the United States, in that it impairs the obligations of the contract of the shareholders of the American Savings & Loan Association, entered into by them with said association, with each other, and with the State of Minnesota when they became members of and shareholders in said association.

Wherefore the said plaintiff in error prays that said judgment of the supreme court of the State of Wisconsin be reversed and annulled, and that said plaintiff in error may be restored to all things which he has lost by reason of said judgment, and that said judgment be rendered in favor of said plaintiff in error and against said defendant in error.

EUGENE G. HAY &
C. H. VAN CAMPEN,
Attorney- for Plaintiff in Error.

22 [Endorsed:] Original. In the Supreme Court of the United States. William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, Minnesota, plaintiff in error, *vs.* L. V. Lewis *et al.*, defendants in error. Assignment of errors. Filed Oct. 13, 1899. Clarence Kellogg, clerk of supreme court Wis.

23 Pleas before the supreme court of the State of Wisconsin, at a term thereof begun and held at the capitol, in Madison, the seat of government of said State, on the second Tuesday, to wit, the eighth day, of August, A. D. 1899.

Present: John B. Cassoday, chief justice; John B. Winslow, Roujet D. Marshall, Charles V. Bardeen, and Joshua Eric Dodge, justices.

CLARENCE KELLOGG, *Clerk.*

Be it remembered that heretofore, to wit, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, came into the office of the clerk of the supreme court of the State of Wisconsin William D. Hale, as receiver of the American Savings and Loan Association, impl'd, &c., and filed in said court his certain notice of appeal according to the statute in such case made and provided, and also the return to such appeal of the clerk of the circuit court of Dane county, in said State, together with the stipulation of the attorneys herein placing cause upon calendar and submitting same upon written assignment of errors filed herewith, without argument, in the words and figures following—that is to say:

24 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association; S. A. Peterson, as Treasurer of the State of Wisconsin; William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County of the State of Minnesota, Defendants.

Please take notice that William D. Hale, as receiver of the American Savings and Loan Association, one of the defendants above named, hereby appeals to the supreme court of the State of Wisconsin from the judgment rendered by the circuit court of Dane county, entered on the 29th day of July, A. D. 1899, in favor of the plaintiff and said S. A. Peterson, as treasurer, as aforesaid, and M. C. Clarke, as receiver of the American Savings and Loan Association, and against said William D. Hale, as receiver aforesaid, and from the whole and every part thereof.

Dated the 29th day of August, 1899.

HAY & VAN CAMPEN,
Attorneys for William D. Hale, as Receiver of the American Savings and Loan Association.

To Erdall & Swansen, Esqs., attorneys for plaintiff and M. C. Clarke, as receiver of the American Savings and Loan Association, and to E. R. Hicks, Esq., attorney for S. A. Peterson, as treasurer of the State of Wisconsin, and to A. T. Torgeson, clerk of the circuit court for Dane county, Wisconsin.

(Endorsements:) State of Wisconsin. Circuit court, Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Ass'n *et al.* Notice of appeal. Due service of within notice by copy is hereby admitted this 29th day of August, 1899. Erdall & Swansen, attorneys for plaintiff and M. C. Clarke, as receiver of the American Savings and Loan Ass'n. E. R. Hicks, att'y general, attorney for treasurer of State of Wisconsin. Mary Grant, deputy clerk circuit court, Dane county. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court, Wis.

25 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association; S. A. Peterson, as Treasurer of the State of Wisconsin; William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County of the State of Minnesota, Defendants.

Pursuant to section 3051 of the Wisconsin Statutes for 1898, we hereby waive an undertaking on appeal from the judgment heretofore rendered in this action on the 29th day of July, 1899.

ERDALL & SWANSEN,
Attorneys for M. C. Clarke, as Receiver of the American Savings and Loan Association and Plaintiff.
E. R. HICKS,
Attorney General, Attorney for State Treasurer.

(Endorsements:) Filed and entered, Rec. Book 6, page 368, Aug. 29, 1899. A. T. Torgeson, clerk. Circuit court, Dane county, Wis. Filed Aug. 29, 1899. A. T. Torgeson, clerk. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

26 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

The State of Wisconsin to the said defendants:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid, and in case of your failure so to do judgment will be rendered against you according to the terms of the complaint, of which a copy is herewith served upon you.

LEWIS & BRIGGS,
Attorney for Plaintiff, L. V. Lewis, and
W. H. MYLREA,
Attorney General.

Post-office address, Madison, Dane county, Wisconsin.

27 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

The above-named plaintiff, by Lewis & Briggs, his attorneys, and by W. H. Mylrea, as attorney general for the State of Wisconsin, complaining of the defendants, respectfully states and alleges—

That at all of the times hereinafter mentioned the plaintiff was, ever since has been, and now is a resident and citizen of the State of Wisconsin, residing at the village of Sun Prairie, in the county of Dane, in said State of Wisconsin.

That on the fifteenth day of April, 1887, the American Building and Loan Association above named was duly organized and incorporated under and by virtue of the laws of the State of Minnesota as a building and loan association and began business as such building and loan association on the said fifteenth day of April, 1887, having its principal office and place of doing business at the city of Minneapolis, in said State of Minnesota; that the said American Building and Loan Association continued to transact the business of a building and loan association under the name aforesaid until some time in the year 1893, when, as this plaintiff is informed and verily believes, the corporate name of the American Building and Loan Association was duly changed to the American Savings and Loan Association; that the defendant S. A. Peterson is the duly elected, qualified, and acting treasurer of the State of Wisconsin.

That on May 10th, 1888, the said defendant association was duly licensed to transact business in the State of Wisconsin, as
28 provided by statute, and which said license was thereafter duly renewed, until on or about the first day of January, 1894, since which time said defendant association has not been licensed to do business in the State of Wisconsin; that some time prior to the year 1891 the said defendant association duly deposited with the State treasurer of the State of Wisconsin, in trust for the benefit and security of all its members in this State, securities of the actual cash value of one hundred thousand dollars, which said securities so deposited were duly approved and accepted by the then State treasurer of the State of Wisconsin and have since been held in trust by him and his successors in office, under the provisions of the laws of the State of Wisconsin relating to foreign building and loan associations, by which provisions the State treasurers are required to hold the securities aforesaid until all shares of stock in said defendant association held by residents of the State of Wisconsin should have been fully redeemed and paid off by the defendant association and until all contracts and obligations of the de-

fendant association to members and persons residing in the State of Wisconsin should have been fully performed and discharged.

That the said defendant, S. A. Peterson, as treasurer of the State of Wisconsin, now holds in his custody said securities duly deposited by the said defendant association of the face value of one hundred thirteen thousand eight hundred and ninety-one dollars and eighty cents ($113,891.80), which said securities are held by him under the trust aforesaid.

That on the twenty-sixth day of March, 1889, the said Lewis subscribed for five shares of stock in said American Building and Loan Association, each of said shares being of the denomination of one hundred dollars ($100.00), and on the said day this plaintiff became the owner and holder of said five shares of stock, and
29 received certificate number 23883 for five shares of stock of the amount of five hundred dollars ($500.00), which said certificate was duly issued by the said American Building and Loan Association, and duly sealed with its corporate seal, signed and executed on the said twenty-sixth day of March, 1889, by F. P. Rundell, president; Charles S. Sproat, secretary, and F. A. Leslie, recorder; that by the terms and conditions of said certificate and in accordance with the contract of membership this plaintiff paid the sum of seven dollars and fifty cents ($7.50) as and for an admission fee to said association, and was required and agreed to pay to the said association sixty cents ($.60) monthly for each of said shares of stock until such share should be matured or be withdrawn, which said payments were required to be made on or before the twenty-sixth day of each month ensuing the execution and delivery of said certificates; that since the said twenty-sixth day of March, 1889, this plaintiff has duly paid to the said defendant association on or before the twenty-sixth of each and every month the sum of sixty cents ($.60) for each of said shares so held and owned by him, in all, the sum of three dollars ($3.00) monthly, the last payment having been made by this plaintiff on the twenty-sixth day of December, 1895, amounting in all to the sum of two hundred and forty-three dollars ($243.00); that this plaintiff has in all respects duly complied with his contract of membership with said defendant association, and with the terms and conditions of the certificate of membership so issued to him as aforesaid, and with the by-laws, rules, and regulations of the said defendant association, and now is the lawful owner and holder of five shares of stock upon which the sum of two hundred and forty-three dollars ($243.00) has been paid by this plaintiff, as aforesaid.

That, as this plaintiff is informed and verily believes, there are a large number of residents and citizens of the State of Wis-
30 consin who own and hold stock in said defendant association and are legal members and stockholders thereof; that this plaintiff is unable to give the names of such members and stockholders or their post-office address; that this plaintiff is informed and verily believes, and so charges, that said defendant association is insolvent; that a large part of the assets of the said defendant association has been improvidently invested and squandered, and

that on the application of a creditor or creditors of the defendant association, residing in the State of Minnesota, one Major W. D. Hale has been appointed receiver of all the property of the defendant association by the courts of Minnesota in proceedings initiated therein.

That under the provisions of the laws of the State of Wisconsin the defendant association is entitled to withdraw the securities deposited with the State treasurer and substitute other and similar securities therefor; that, as this plaintiff is informed and verily believes, during the year last past the defendant association has so withdrawn a large portion of the securities theretofore duly deposited with the said State treasurer and substituted in their stead other securities; that, as this plaintiff is informed and verily believes, said securities so deposited with the State treasurer consist in large part of mortgages upon real estate, which are likely to depreciate in value unless enforced according to law; that the only property of said association in this State are the securities aforesaid, and that if said securities are not preserved and properly cared for and converted to cash it will be impossible for resident members of said association to recover back moneys paid into said association; that it is necessary for the protection of the rights of this plaintiff and of the members and stockholders in said defendant association who reside in the State of Wisconsin that a receiver for the de-
31 fendant association in the State of Wisconsin should be appointed by this honorable court, in order to ascertain all of the members and stockholders in said association residing in the State of Wisconsin and the amount of their respective claims, and to convert into money the said securities so deposited for their protection, and to distribute the same to such persons as may be entitled thereto, all under the direction and supervision of this court.

That in the meantime and until the further order of the court the defendant S. A. Peterson, as State treasurer, be enjoined and restrained from in any manner parting with the custody and control of the said securities so in his hands as aforesaid, and from permitting any withdrawal or substitution of the same.

Wherefore the plaintiff demands judgment that the securities of the American Savings and Loan Association so held in trust by said S. A. Peterson, as State treasurer of the State of Wisconsin, be sequestrated and distributed among the members and stockholders of said association who are residents of the State of Wisconsin, including this plaintiff, according to law.

That a receiver or receivers to take charge of said securities and convert the same into money be appointed with the usual powers and authority conferred upon receivers in such cases.

That all persons be restrained and enjoined from proceeding in any manner or way to obtain any lien upon said securities and from in any manner interfering with or intermeddling with the said securities, and that if it shall appear necessary and proper to the court that the court shall direct notice to be given in such manner as it shall deem proper, requiring all members and stockholders of the said American Building and Loan Association or the said

American Savings and Loan Association who are residents of the State of Wisconsin to submit their claims and become parties to this action within such reasonable time as may be fixed by
32 the court.

That in the meantime and until the further order of the court the said defendant, S. A. Peterson, be enjoined and restrained from in any manner parting with the custody or control of said securities, and be enjoined and restrained from permitting any withdrawal or substitution of the same, and that the plaintiff have such other and further relief in the premises as may be just and equitable.

LEWIS & BRIGGS,
Plaintiff's Attorneys.
W. H. MYLREA,
Attorney General State of Wisconsin, Counsel.

STATE OF WISCONSIN, } ss:
Dane County, }

L. V. Lewis, being first duly sworn, on oath deposes and says that he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same are true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

L. V. LEWIS.

Subscribed and sworn to before me this 16th day of January, 1896.

H. E. BRIGGS,
Notary Public, Dane Co., Wis.

33 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

On reading and filing the annexed verified complaint herein—

It is hereby ordered that the defendant S. A. Peterson, as treasurer of the State of Wisconsin, be, and he hereby is, enjoined and restrained from in any manner parting with the custody or control of the securities of the American Building and Loan Association or the American Savings and Loan Association now in his hands as such State treasurer, and that he be, and hereby is, enjoined and restrained from permitting any withdrawal or substitution of such securities until the further order of the court herein.

That both of said defendants are hereby ordered to show cause, if

any they have, before the circuit court of Dane county, held at the court-house, in the city of Madison, in such county, on the twenty-seventh day of January, A. D. 1896, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why a receiver or receivers shall not be appointed and all further relief as prayed for in the complaint shall not be granted.

Let a copy of this order be served, with the summons and complaint, as notice to the said defendants of the provisions herein.

By the court:

ROBERT G. SIEBECKER,
Circuit Judge.

Dated this 17th day of January, A. D. 1896.

34 (Endorsements:) State of Wisconsin. Circuit court, Dane Co. L. V. Lewis, pl'ff, *v.* Amer. Savings & Loan Ass'n & S. A. Peterson, as State treas. Copy. Due personal service of a copy of the within summons, complaint, and order to show cause admitted this 17th day of January, 1896. Service admitted. Chas. M. Dow, ass't treasurer. S. A. Peterson, treasurer. Henry Casson, secretary of State of Wisconsin. Filed and entered in Order Book R Feb. 1, 1896. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

35 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION and S. A. Peterson, as State Treasurer, Defendants.

DANE COUNTY, *ss:*

H. E. Briggs, being first duly sworn, on oath deposes and says that he is one of the attorneys of the plaintiff in this action; that on the 17th day of January, 1896, deponent mailed a duplicate of the summons and complaint and order to show cause in this action in an envelope, with the postage thereon duly prepaid, addressed to "The American Savings and Loan Association, Minneapolis, Minnesota," that being the home office of said association.

H. E. BRIGGS.

Subscribed and sworn to before me this 31st day of January, 1896.

C. F. LAMB,
Notary Public, Dane County, Wisconsin.

(Endorsements:) Copy. State of Wisconsin. Circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* The American Savings and Loan Association and S. A. Peterson, as State treasurer, defendants.

Affidavit of service of summons and complaint. Circuit court, Dane county, Wis. Filed Feb. 6, 1896. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

36 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business in the Name of the American Building and Loan Association, and Sewell A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

Now comes the above-named defendant, Sewell A. Peterson, State Treasurer of the State of Wisconsin, by John L. Erdall, assistant attorney general of said State, and for answer to the plaintiff's complaint herein alleges and shows to the court:

That on or about the 7th day of January, 1895, this answering defendant became, ever since has been, and still now is State treasurer of the State of Wisconsin, duly elected and qualified and acting as such.

That prior to the said 7th day of January, 1895, the said defendant association had deposited with the State treasurer of the State of Wisconsin, in trust for the benefit and security of all its members in this State, mortgages on real estate to the amount, at their face value, of 162,934.00 dollars, to be held in trust by said State treasurer, as aforesaid; that the said mortgages were so deposited pursuant to sections 1 and 2 of chapter 525 of the Laws of Wisconsin for the Year 1889; that when this answering defendant succeeded to the office of State treasurer of said State, on said 7th day of January, 1895, there was then so on deposit with the then said State treasurer, and this answering defendant received from his predecessor in office, the said mortgages, amounting to 162,934.00 dollars, at their face value, which said mortgages this answering defendant as such State treasurer, received from his said predecessor in
37 office for the purposes mentioned in said chapter 525 of the Laws of Wisconsin for the Year 1889 as amended by chapter 469 of the Laws of Wisconsin for the Year 1891.

That since the said 7th day of January, 1895, there have been withdrawn by said defendant association from this answering defendant, as such State treasurer, a portion of said mortgages and deposited with him in their place and stead other mortgages on real estate pursuant to and by virtue of said chapter 469, and at the time of the commencement of this action this answering defendant had and still has in his possession the said real-estate mortgages, amounting at their face value to the sum of 145,234.00 dollars, and that he then held and still holds the same in trust for the benefit and security of all the members of said association residing in this State, and until all shares of said defendant association held by residents

of this State shall have been fully redeemed and paid off by said defendant association and until its contracts and obligations to persons and members residing in this State shall have been fully performed and satisfied.

Defendant, further answering, alleges that he is unable to state what is the actual cash value of the said mortgages, but is informed and believes that they are worth much less than their face value.

That, as this answering defendant alleges upon information and belief, there are a large number of members of said defendant association residing in this State and a large number of persons and members residing in this State with whom the said defendant association has contracts and obligations unpaid and unredeemed; that this answering defendant is unable to state the exact number of such members or persons residing in this State, but that some thirty-five members or more have addressed inquiries to the attorney general of said State, its commissioners of insurance, and to this answering defendant respecting the condition of said defend-
38 ant association and the necessary steps to be taken for their protection.

That, as this answering defendant alleges upon information and belief, the said members of said defendant association and persons residing in this State held at the time of the commencement of said action and now hold a large number of shares of stock in said defendant association which have not been redeemed or paid by said defendant association, but to what exact amount this answering defendant is unable to state.

That, as this answering defendant alleges upon snformation and belief, the said association is insolvent, and there are no funds or securities available for the security of said members and persons residing in this State or for the payment or redemption of said shares of stock except the said mortgages so deposited, as aforesaid, with the State treasurer of Wisconsin in trust and now held by this answering defendant in trust for the benefit and security of all the members of said defendant association in this State until its contracts and obligations to persons and members residing in this State shall have been fully performed and discharged.,

Defendant alleges upon information and belief that the said mortgages are 112 in number and range in amounts from two hundred to five thousand dollars each, and are upon lands in the following-named States: Arkansas, Michigan, Minnesota, Kansas, Iowa, South Dakota, Washington, Dakota, Missouri, Montana, Nebraska, Alabama, Indiana, New Mexico, Idaho, California, Texas, Nevada, Virginia, Oregon, Utah, and Wisconsin.

That said defendant association, through the receiver thereof appointed by the Minnesota courts, as alleged in said complaint, may, and this answering defendant fears will, receive payment upon said mortgages or some of them from the makers thereof, to the injury of the members of said defendant association residing in
39 this State, unless restrained by the order of this court, and unless this answering defendant be authorized to execute the

trust imposed on him, as aforesaid, by the collection of the said mortgages for the benefit of the said members and persons residing in this State.

This answering defendant further alleges upon information and belief that in order to execute the trust reposed in him by said chapter 525 and said chapter 469, and in order to protect the said members and persons residing in this State, it will be necessary for him to collect and convert into money the said mortgages so held in trust by him, as aforesaid, or a large portion of them, and that he have the authority of the court so to do.

That this answering defendant pleads and alleges the foregoing facts as a counter-claim to the plaintiff's complaint herein.

Wherefore this answering defendant prays that he be authorized and directed by this court to execute the trust reposed in him, as aforesaid, by collecting and converting into cash the said mortgages, or so many thereof as shall be necessary in order to redeem and pay the shares of the members of said association residing in this State, and to pay the contracts and obligations of the said association to its said members and persons residing in this State for whose security and benefit the said mortgages were so deposited with the said State treasurer of the State of Wisconsin, and that the said defendant association be enjoined by the order of this court from attempting to collect any of the said mortgages and from receiving any payments thereon through its said receiver appointed in Minnesota or otherwise.

That all persons be restrained and enjoined from proceeding in any manner or way to obtain any lien upon said securities, and from in any manner interfering with or intermeddling with the said securities, and that if it shall appear necessary and proper to the court, the court shall direct notice to be given in such manner as it shall deem proper, requiring all members and stockholders of the said American Building and Loan Association or the said American Savings and Loan Association who are residents of the State of Wisconsin to submit their claims and become parties to this action within such reasonable time as may be fixed by the court, and that this answering defendant have such other and further relief in the premises as may be just and equitable.

JOHN L. ERDALL,
Assistant Attorney General for the State of Wisconsin.

STATE OF WISCONSIN, }
Dane County, } *ss:*

Sewell A. Peterson, being first duly sworn, says that he is the State treasurer of the State of Wisconsin, and is the defendant above named; that he has heard read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

SEWELL A. PETERSON.

Subscribed and sworn to before me this 5th day of February, A. D. 1896.

JOHN L. ERDALL,
Notary Public, Dane County, Wisconsin.

(Endorsements:) State of Wisconsin, circuit court for Dane county. L. V. Lewis, plaintiff, *v.* The American Savings and Loan Association and Sewell A. Peterson, defendants. Answer of Sewell A. Peterson. Due service of the within answer admitted this 5th day of Feb., 1896. Lewis & Briggs, att'ys for pl'ff, L. V. Lewis. Circuit court, Dane county, Wis. Filed Feb. 6, 1896. C. E.
41 Parish, clerk. Copy. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

42 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

The above-named plaintiff, for a reply to the counter-claim interposed in this action by the defendant S. A. Peterson, as State treasurer of the State of Wisconsin, respectfully states and alleges:

The plaintiff denies that in order to execute the trust reposed in the said S. A. Peterson, as State treasurer, by chapter 525 of the Laws of Wisconsin for the Year 1889, and chapter 469 of the Laws of the State of Wisconsin for the Year 1891, which said trust is set forth in the complaint in this action and in said counter-claim, and that in order to protect the members and persons residing in the State of Wisconsin who are stockholders, members, or creditors of the defendant association, it is or will be necessary for the said defendant, S. A. Peterson, to collect and convert into money the mortgages held by him under said trust or any portion of them. The plaintiff denies that said defendant, S. A. Peterson, ought or should have the authority of the court so to do.

And the plaintiff denies that any trust whatsoever is reposed in the said defendant, S. A. Peterson, as State treasurer, by said chapters that the defendant is required to execute, and alleges that the said S. A. Peterson, as State treasurer, is a mere custodian of the mortgages and is not authorized or required by law to collect and convert into money the same.

LEWIS & BRIGGS,
Plaintiff's Attorneys.

43 [Endorsed:] (Copy.) State of Wisconsin, circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* The American Savings and Loan Ass'n, formerly doing business as the American Bldg and Loan Ass'n, and S. A. Peterson, as treasurer of the State of Wisconsin, defendants. Reply of plaintiff to defendant's S. A. Peterson counter-claim. Service of a copy of the within reply is admitted this 4th day of Feb'y, 1896, and verification of the same is hereby waived. W. H. Mylrea, att'y gen. Lewis & Briggs, plaintiff's attorneys. Circuit Court, Dane Co., Wis. Filed March 4, 1896. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

44 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,

vs.

THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

Whereas the only issue between the plaintiff, L. V. Lewis, and the defendant S. A. Peterson, as treasurer of the State of Wisconsin, is that raised by the complaint and counter-claim of the said S. A. Peterson, as such treasurer, and the plaintiff's reply to said counter-claim, which said issue is the construction of chapter 525 of the Laws of Wisconsin for the Year 1889 as amended by chapter 469 of the Laws of Wisconsin for the Year 1891, and being the question under said chapters whether the said defendant, S. A. Peterson, as such State treasurer, is a naked trustee of the securities deposited with him by the defendant association, or whether the said defendant, S. A. Peterson, as such State treasurer, is charged with active duties under said chapters as such trustee in relation to the same, and whether a receiver can properly be appointed to take charge of said securities as prayed for in the complaint, and the said defendant, S. A. Peterson, as such State treasurer, can legally and properly turn over to a receiver of this court the securities so held by him;

And whereas said questions could be raised and determined by a demurrer *ore tenus* to the plaintiff's complaint, and the parties being desirous of avoiding delay in the matter:

Now, therefore, it is hereby stipulated and agreed by and between the plaintiff, L. V. Lewis, by his attorneys, Lewis & Briggs,
45 and the defendant, S. A. Peterson, as State treasurer, by W. H. Mylrea, attorney general of the State of Wisconsin, and John L. Erdall, assistant attorney general, that the questions aforesaid be submitted to the court upon the complaint, counter-claim, and reply at the time of the hearing of the order to show cause granted in the above-entitled action, to wit, on the 5th day of February, A. D. 1896.

Dated at Madison, Wisconsin, this 4th day of February, A. D. 1896.

LEWIS & BRIGGS,
Plaintiff's Attorneys.
W. H. MYLREA, *Att'y Gen., and*
JOHN L. ERDALL,
Ass't Att'y Gen.,
Attorneys for Defendant S. A. Peterson, as State Treasurer.

(Endorsements:) Copy. Circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Ass'n *et al.*, defendants. Stipulation submitting issue. Circuit court, Dane Co., Wis. Filed Feb'y 4th, 1896. C. E. Parish, clerk. Rule Book E, page 232. Filed June 25, 1897. Clarence Kellogg, clerk supreme court Wis. Filed August 30, 1899. Clarence Kellogg, clerk supreme court Wis.

46 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

The application of the plaintiff in the above-entitled action for a receiver and for an injunction according to the prayer of the complaint this day coming on to be heard and Lewis & Briggs appearing for the plaintiff and W. H. Mylrea appearing as attorney general of the State of Wisconsin, and it appearing to the court that the summons and complaint and order to show cause in this action *was* duly served upon the defendants according to law, and the court being sufficiently advised in the premises, on motion of the attorneys for the plaintiff—

It is ordered, adjudged, and decreed by the court that M. C. Clarke be, and he hereby is, appointed receiver of this court of the American Savings and Loan Association, formerly doing business as the American Building and Loan Association, in the State of Wisconsin, and of the property and securities heretofore deposited by the said association under the provisions of chapter 525 of the Laws of the State of Wisconsin for 1889 with the treasurer of the State of Wisconsin and now held by the defendant S. A. Peterson, as such treasurer, under the trust declared by said act.

That the said receiver be, and he hereby is, fully authorized, empowered, and directed to take immediate possession of all and singular the bonds, stock, mortgages, and other securities of whatsoever name or nature now held by the said defendant, S. A. Peterson, as said treasurer, and deposited with him or with his prede-
47 cessors in office by the said The American Savings and Loan Association or The American Building and Loan Association

under any provisions of the laws of the State of Wisconsin, and the said defendant, S. A. Peterson, upon the demand of the said receiver, is hereby ordered to deliver to such receiver all such securities so held by him, and the said receiver is hereby ordered and directed to enforce and collect said securities, and to convert the same into money according to law, and for the fulfillment of the trust under which they have heretofore been held by the treasurer of the State of Wisconsin, and to distribute the same among such persons as may by the court be found to be entitled thereto in such manner and such proportions as may be ordered by the court.

And the said receiver is hereby fully authorized and empowered to institute and prosecute all such suits, actions, and proceedings as may be necessary in his judgment for the protection, enforcement, and collection of said securities; likewise to defend all such suits, actions, or proceedings as may be instituted against him as such receiver; also to appear in and conduct the prosecution or defense of any suits, actions, or proceedings now pending in any court or before any officer, department, or tribunal in which said securities or any of them may be involved, the prosecution or defense of which will in the judgment of said receiver be necessary for a proper discharge of his duties as such receiver of the property placed in his charge or for the interest of creditors connected therewith.

That the said receiver is hereby ordered and directed to give notice to all members and stockholders of the said The American Savings and Loan Association or The American Building and Loan Association who are residents of the State of Wisconsin of his appointment by this court as such receiver by causing a notice thereof to be published once in each week for four consecutive weeks
48 in the Wisconsin State Journal, a newspaper published at the city of Madison, in the State of Wisconsin; in the Milwaukee Sentinel, a newspaper published at the city of Milwaukee, in the State of Wisconsin; in the Leader, a newspaper published at the city of Eau Claire, Wisconsin, and in the Daily Leader, a newspaper published at the city of Superior, in the State of Wisconsin; which said notice shall require all members and stockholders of the said The American Savings and Loan Association, formerly doing business under the name of The American Building and Loan Association, who are residents of the State of Wisconsin, to submit their claims against said association and become parties to this action within three months from the date of the first publication of said notice, which said period of three months is hereby declared a reasonable time within which to submit such claims, a copy of which said notice shall likewise be mailed by said receiver to each resident of the State of Wisconsin known to said receiver to be a member or stockholder of said association, and said receiver shall give said notice notwithstanding any person or persons adversely interested or feeling aggrieved by this order shall appeal from the same.

It is further ordered that all persons be, and they hereby are, restrained and enjoined from proceeding in any manner or way to obtain any lien upon said securities or the indebtedness represented thereby, and from in any manner interfering with the said receiver

in his enforcement, collection, and handling of the same, and the obligors in said securities are hereby restrained and enjoined from making any payments either on principal or interest to any person, officer, or corporation, except the said receiver of this court.

It is further ordered that said receiver be, and he hereby is, vested, in addition to the powers aforesaid, with all the general powers
49 of a receiver in cases of this kind, subject to the supervision of this court.

That said receiver is hereby further required, within three days from the date of this order, to file with the clerk of this court a duly executed bond with sureties to be approved by this court in the penal sum of one hundred and twenty-five thousand dollars ($125,000) conditioned for the faithful discharge of his duties and for his accounting for all funds coming into his hands as such receiver.

And it is further ordered that the said receiver shall retain possession and continue to discharge his duties as such until the further order of this court in the premises; that the said receiver keep account of all moneys received and paid out by him in the execution of his trust, and that at the expiration of the period within which resident members and stockholders of said association may submit their claims and become parties to this action he shall report to the court the names of the persons so submitting their claims and becoming parties to this action, together with the amounts claimed due to each, and together with his approval or disapproval of the correctness of such claims.

And it is further ordered that an injunction be issued against the said The American Savings and Loan Association, formerly doing business under the name of The American Building and Loan Association, and all persons claiming to act by, through, or under it, and against all creditors and other persons, enjoining and restraining them and each of them from interfering with the said receiver taking possession of and handling the said property as hereinbefore provided.

Dated February 5th, A. D. 1896.

By the court:

ROBERT G. SIEBECKER,
Circuit Judge.

50 (Endorsements:) State of Wisconson. Circuit court, Dane county. L. V. Lewis, plaintiff, *vs.* The American Savings and Loan Association *et al.*, defendants. Order appointing receiver. Filed and entered in Order Book "R," page 126, Feb. 6, 1896. C. E. Parish, clerk.

51 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

Please take notice that the original order appointing a receiver in the above-entitled action, of which a copy has this day been served upon you, was filed in the office of the clerk of the circuit court for Dane county on the 7th day of February, A. D. 1896, and entered by said clerk on said day.

LEWIS & BRIGGS,
Plaintiff's Attorneys.

To W. H. Mylrea and John L. Erdall, representing S. A. Peterson, as State treasurer.

(Endorsements:) (Copy.) State of Wisconsin. Circuit court for Dane county. L. V. Lewis, plaintiff, *v.* The American Savings and Loan Ass'n, formerly doing business as the American Bldg. and Loan Ass'n, and S. A. Peterson, as treasurer of the State of Wisconsin, defendants. Notice of filing and enter of order appointing receiver. Service of a copy of the within notice and of the order appointing receiver admitted this 7th of Feb'y, 1896. W. H. Mylrea, att'y gen. Time for filing exceptions, if necessary, extended ten days from this 21st of Feb'y, 1896. Lewis & Briggs, plaintiff's attorneys. Original filed in circuit court, Dane Co., Wis., March 4, 1896. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

52 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

DANE COUNTY, *ss:*

Harry E. Briggs, being first duly sworn, on oath deposes and says that on the 7th day of February, A. D. 1896, he duly and personally served a copy of the order appointing a receiver in the above-entitled action, etc., upon Henry Casson, secretary of the State

of Wisconsin, and S. A. Peterson, treasurer of the State of Wisconsin, by delivering to and leaving with each of them a true copy of said order, and that on the same day deponent mailed a copy of said order, in an envelope with the postage thereon duly prepaid, and without any direction thereon for the return of the same in case of the non-delivery thereof, addressed to "The American Savings and Loan Association, Minneapolis, Minnesota," that being the home office of the said association.

H. E. BRIGGS.

Subscribed and sworn to before me this 7th day of February, A. D. 1896.

M. C. CLARKE,
Notary Public, Dane County, Wisconsin.

(Endorsements:) State of Wisconsin. Circuit court for Dane county. L. V. Lewis, plaintiff, *v.* The American Savings and Loan Association, formerly doing business under the name of the American Bldg. and Loan Ass'n, and S. A. Peterson, as treasurer of the State of Wisconsin, defendants. Affidavit of service of order appointing receiver. Original filed in circuit court for Dane county this Feb. 8, 1896. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis.

53 STATE OF WISCONSIN:

Circuit Court, Dane County.

L. V. LEWIS
against
THE AMERICAN SAVINGS AND LOAN ASSOCIATION and S. A. Peterson, as Treasurer of the State of Wisconsin.

Please take notice that I have been retained by and appear for the defendant The American Savings and Loan Association in the above-entitled action and demand that a copy of the plaintiff's complaint therein and the order appointing a receiver be served upon — at my office, 524 Boston block, Minneapolis, Minn.

Yours, &c.,
F. B. HART,
Attorney for Defendant.

Dated Feb'y 11, 1896.

To Lewis & Briggs, attorneys for plaintiff.

(Endorsements:) Copy. State of Wisconsin. Circuit court for Dane county. L. V. Lewis *v.* American Savings and Loan Ass'n *et al.* Notice of appearance and demand of copy of complaint. American Savings and Loan Ass'n. Circuit court, Dane county, Wis. Filed Feb. 12, 1896. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

54 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

William D. Hale respectfully represents to the court that he is a citizen and resident of the city of Minneapolis and State of Minnesota, and that heretofore, to wit, on the 14th day of January, 1896, he was duly appointed by the district court of Hennepin county, upon the *ex parte* application of the attorney general in the name of the State of Minnesota, a receiver of said court for the American Savings and Loan Association, a corporation organized under the building and loan association laws of the State of Minnesota and having its principal place of business in the city of Minneapolis, in said State.

That thereafter said association joined issue with the State of Minnesota in said court upon said application for a receiver, which issue was tried by said court, resulting in its decision in favor of said State, and thereafter appealed to the supreme court of the State of Minnesota, which court, upon appeal, affirmed the decision of the district court, which district court, after a final hearing and being fully advised, did, on the 18th day of June, 1896, appoint this petitioner a permanent receiver for said association, with authority to take charge of all of the property of said association, and, after reducing the same to possession, to distribute the proceeds equitably among all of the shareholders and creditors thereof, wherever resident; that said association had stockholders
55 in thirty-five States of the Union, held mortgages on real estate in twenty-nine States, and owned real estate in nineteen States; that prior to his appointment last above mentioned as a permanent receiver, and pending the final determination of the action between said State and said association, he did no more than to conserve the interest of all parties and preserve and take care of the property of the association; that since said appointment as a permanent receiver, on the 18th day of June, 1896, he has been very busy in ascertaining the condition of the property of said association and filing the claims of the shareholders, which said work has required a very large and varied correspondence with persons in every part of the United States. Petitioner further says that he found pending when he assumed the duties of his said office a very large number of actions at law to which said association was a party, both in Minnesota and in many of the other States of the Union, and that it has required all of the time of his attorney in protecting the interests of said association in the said actions.

Your petitioner would further represent that the above-entitled

action was commenced on the 17th day of January, A. D. 1896, after he had been appointed by said district court of Hennepin county a temporary receiver for said American Savings and Loan Association, and that he was not made a defendant in said action.

That since his appointment as a permanent receiver for said association, on the 18th day of June, 1896, the said association, by its proper officers, has duly conveyed to him title to all of the real estate owned by said association wheresoever situate, and duly assigned to him all of the mortgages and other property owned by said association wheresoever the same may be found, including the mortgages referred to and described in plaintiff's complaint.

Your petitioner would further represent that said association was a mutual building and loan association, and that under its
56 charter and its certificates of membership the interest, liability, rights, and privileges of each of its shareholders were identical, of whatsoever State the said shareholder might have been a resident. He would therefore respectfully represent to the court that the controversy between the parties plaintiff and defendant in the above-entitled action cannot be determined without prejudice to his rights and the rights of the many shareholders in said association whom he represents, and that the complete determination of said controversy cannot be had without his presence as a party defendant in said action, and that he, as a general receiver for the property of the American Savings and Loan Association, has such an interest in the mortgages referred to in the plaintiff's complaint in said action as requires that he should be made a party for the due protection of the same.

He would therefore respectfully petition this honorable court to make its order requiring that he be made a party defendant in said action, and be permitted to file his answer setting up his rights therein, and given reasonable time within which to file the same.

WILLIAM D. HALE.

Subscribed and sworn to before me this 11th day of January, A. D. 1897.

E. M. VAN CLEVE,

[SEAL.] *Notary Public, Hennepin County, Minnesota.*

EUGENE G. HAY,
Att'y for Wm. D. Hale.

(Endorsements:) (Copy.) State of Wisconsin. Circuit court for Dane county. L. V. Lewis, plaintiff, *v.* The American Savings and Loan Association *et al.*, defendants. Petition of William D. Hale to be made party defendant in the above-entitled action. Circuit court, Dane county, Wis. Filed Jan. 13, 1897. C. E. Parish. Eugene G. Hay, att'y for Hale. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

57 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

The above-entitled matter coming up for hearing upon the petition of William D. Hale, the general receiver of the American Savings and Loan Association, appointed by the district court of Hennepin county and State of Minnesota to be made a party defendant in this action, the plaintiff L. V. Lewis being represented by Messrs. Lewis & Briggs, his attorneys, and M. C. Clark, the receiver heretofore appointed by this court, being represented by Lewis, Briggs & Dudgeon, his attorneys, and S. A. Peterson, treasurer of the State of Wisconsin, being represented by W. H. Mylrea, as attorney general of Wisconsin, and all of said parties waiving notice of this hearing and giving, in open court, their consent to the granting of said petitions; and it appearing to the satisfaction of the court that a complete determination of the controversy in this action cannot be had without the presence of said petitioner as a party thereto, and that he, the said petitioner, has such an interest in the subject-matter of the controversy as to require him to be made a party for the due protection thereof:

It is therefore ordered by the court that the said William D. Hale, general receiver of the American Savings and Loan Association, appointed by the district court of Hennepin county and State of Minnesota, be made a party defendant in this action, and that he
58 is hereby given permission to file his answer to the complaint herein on or before the first day of February, A. D. 1897.

By the court:

ROBERT G. SIEBECKER, *Judge*.

Dated this 13th day of January, A. D. 1897.

(Endorsements:) Copy. State of Wisconsin. Circuit court, Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Association and S. A. Peterson, as State treasurer, def'ts. Order of court making W. D. Hale party defendant. Original filed and entered in Order Book S, page 164, Jan. 13, 1897. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

59 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson as Treasurer of the State of Wisconsin; William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County in the State of Minnesota, Defendants.

Answer of William D. Hale, as Receiver of American Savings and Loan Association.

The defendant William D. Hale, having heretofore petitioned this court to be made a defendant in the above-entitled action, and this court having heretofore filed its order directing that said Hale be made a defendant in said action, and requiring him to file his answer on or before the first day of February, 1897, for his answer to the plaintiff's complaint herein—

Admits that the plaintiff is and has been a resident and citizen of the State of Wisconsin, as in said complaint alleged.

Admits that the American Savings and Loan Association was duly licensed by the State of Wisconsin to do business in said State in the year 1889, which said license was continued from time to time thereafter until the first day of January, 1894, since which time said association has not been licensed to do business in said State of Wisconsin, as in said complaint alleged.

Admits that on the 26th day of March, 1889, the plaintiff herein subscribed for and became the owner of five (5) shares of the stock of said association, as in said complaint alleged, and that he
60 made his regular payments on said stock, as in said stock subscription he promised and agreed to do, on the 26th day of every month up to and including the 26th day of December, 1895, as in said complaint alleged, and that said plaintiff did in all respects comply with his contract of membership with said association, and with the terms and conditions of the certificate issued to him, and with all the by-laws, rules, and regulations of said association, and was and is the lawful owner and holder of five (5) shares of the stock of said association upon which the sum of $243.00 has been paid by said plaintiff.

Admits that the defendant S. A. Peterson was and is the treasurer of the State of Wisconsin, and *that* at the time of the making and filing of the plaintiff's complaint herein held in his possession certain mortgages of the defendant association under conditions hereinafter more fully set out and described.

For further answer and counter-claim herein, this defendant alleges—

That the American Savings and Loan Association was at the times mentioned in plaintiff's complaint a mutual building and

loan association organized and doing business by virtue of the laws of the State of Minnesota; that said association was originally incorporated under said laws on the 15th day of April, 1887, as the "American Building and Loan Association," and thereafter, to wit, on the 26th day of June, 1892, duly changed its name to "American Savings and Loan Association," without altering, affecting, relinquishing, or surrendering any of its rights, powers, privileges, immunities, or liabilities, and ever since up to the 14th day of January, 1896, did continue to conduct and carry on the business of a mutual building association under said last name in the city of Minneapolis, in the State of Minnesota; that at the time of the organization and incorporation of said association it duly made,

61 filed, and published its articles of incorporation, a copy of which said articles of incorporation is attached hereto, marked Exhibit "A," and it is asked that the same be made a part of this answer as fully and completely as if copied *in extenso* herein.

That thereafter, to wit, on the 31st day of July, 1888, said association duly adopted amended articles of incorporation and duly filed and published the same, a copy of which said amended articles is attached hereto, marked Exhibit "B," and it is asked that the same be made a part of this answer as fully and completely as if copied *in extenso* herein.

That, among other amendments made at said time in said amended articles of incorporation, said association did amend said articles by adding thereto the nineteenth article, which reads as follows:

"The board of directors may sell and dispose of the mortgages held by this corporation whenever they may deem best, and as provided by the by-laws."

That upon said 31st day of July, 1888, the stockholders of said association duly adopted a full and complete set of by-laws, which were approved by the public examiner of the State of Minnesota, which said by-laws amended and took the place of all other by-laws, a copy of which said by-laws is attached hereto, marked Exhibit "C," and it is asked that the same be made a part of this answer as fully and completely as if copied *in extenso* herein.

That in said by-laws there was no provision whatever for selling or disposing of the mortgages of the association.

That thereafter, to wit, on the 13th day of March, 1890, said board of directors of said association regularly and duly amended said by-laws, which were approved by the public examiner of Minnesota, a copy of which said by-laws, as amended, is attached hereto, marked Exhibit "D," and it is asked that the same be made a part of this answer as fully and completely as if copied *in extenso* herein.

62 That thereafter, to wit, on the 12th day of June, 1891, said board of directors of said association regularly and duly amended said by-laws and duly filed said amended by-laws in the office of the public examiner of the State of Minnesota, a copy of which said by-laws, as amended, is attached hereto, marked Ex-

hibit "E," and it is asked that the same be made a part of this answer as fully and completely as if copied *in extenso* herein.

That thereafter, to wit, on the 14th day of May, 1892, said board of directors of said association regularly and duly amended the said by-laws and duly filed said amended by-laws in the office of the public examiner of the State of Minnesota, a copy of which said amended by-laws is attached hereto, marked Exhibit "F," and it is asked that the same be made a part of this answer as fully and completely as if copied *in extenso* herein; that said by-laws were never thereafter amended.

That in said amended by-laws, marked Exhibits "D," "E," and "F," there is no provision whatever for selling and disposing of the mortgages of said association.

That on the 11th day of July, 1889, said association, at a regular meeting of its board of directors, duly amended its articles of incorporation by amending section 19 thereof so that the same would read as follows:

"The board of directors shall not sell or dispose of any of the mortgages held or owned by this corporation."

That said amendment to said articles of incorporation was made by said association in full and complete compliance with the provisions of the laws of the State of Minnesota relative to the amendment of the articles of incorporation of building associations, to wit, section 16, chapter 236, of the General Laws of the State of Minnesota for 1889, which said section 16 reads as follows, to wit:

63 "SECTION 16. Any building and loan association heretofore or hereafter incorporated under the laws of this State may at any time increase the amount of its capital stock, or amend its articles of incorporation in any other respect by a vote of at least three-fourths of its board of directors. Provided, that no such increase shall be made unless three-fourths of the capital stock previously authorized has actually been issued and the amount of increase made at any one time shall not exceed the amount issued previous to the time of such increase."

That the first act passed by the legislature of the State of Minnesota relating to building, loan, and savings associations was approved and became a law on the 22nd day of April, 1889, and is chapter 236 of the General Laws of Minnesota for the Year 1889; that section 6 of said chapter reads as follows:

"Every building and loan association heretofore or hereafter incorporated under the laws of this State, and governed by this act, shall deposit and keep with the State auditor, or with a duly chartered trust company of this State, approved by the public examiner, in trust for all its members and creditors, all mortgage or other securities received by it in the usual course of business. When deposited with a trust company, such company shall certify to the auditor the possession of such securities and the same shall not be surrendered without the authority or sanction of the auditor. Provided, that every such corporation heretofore organized, not having or owning mortgage or other securities to the amount of twenty-five

thousand dollars ($25,000) shall deposit with the State auditor additional securities, to make, with the securities so owned and deposited, equal in value to said sum of twenty-five thousand dollars ($25,000), and every such corporation hereafter organized under this act, shall deposit and keep with the State auditor in trust as aforesaid,
64 securities of the value of twenty-five thousand dollars ($25,000) before commencing to do business. The securities mentioned in this proviso shall consist of bonds or Treasury notes of the United States or national-bank stocks, or of any solvent city, county or town of this State or any other State of the United States, having the legal authority to issue the same, and such securities may be withdrawn from time to time when mortgage securities of corresponding value shall be deposited, as provided in this act, or when other securities of like character are substituted therefor, and it shall be the duty of the public examiner from time to time to examine said association to ascertain whether all its securities are deposited as required by this act.

"Provided, that whenever required by the laws of any other State, Territory or nation, all securities taken in such State by any association organized under the laws of this State, and subject to the provisions of this act, may be deposited with some officer authorized to receive the same in such State under the laws thereof, for the benefit of its members and creditors, but in every such case a certificate of such depository showing the amount and character of such deposits, shall be filed with the auditor of this State, and renewed annually, together with a statement verified by the affidavit of some officer of such association who has knowledge of the facts, showing all of the securities taken by such association in such State at the time of the filing of such certificate, and in case any securities taken in any such State are not deposited there, then the same shall be deposited here as required by this act."

That the above and foregoing is the only provision of said law relative to the deposit of securities by building associations organized under the laws of Minnesota in other States.

That at the biennial session of the legislature of the State of Minnesota for the year 1891 said section 6 of said law was amended so as to read as follows:

65 "Every building and loan association heretofore or hereafter incorporated under the laws of this State and governed by this act shall deposit and keep with the State treasurer, or with a duly chartered trust company of this State, approved by the public examiner, in trust for all its members and creditors, all mortgages or other securities received by it in the usual course of its business. When deposited with a trust company, such company shall certify to the public examiner the possession of such securities, and the same shall not be surrendered without the authority and sanction of the said public examiner. Provided, that every such corporation heretofore organized not having or owning mortgage or other securities to the amount of twenty-five thousand dollars ($25,000) shall deposit with the State treasurer additional securities to make, with the securities so owned and deposited, the sum of

twenty-five thousand dollars ($25,000), and every such association hereafter organized under this act shall deposit and keep with the State treasurer in trust as aforesaid, securities of the value of twenty-five thousand dollars ($25,000) before commencing to do business. The securities mentioned in this provision shall consist of bonds or Treasury notes of the United States, or national bank stocks, or the bonds of this State, or of any other State of the United States, or of any solvent city, county or town of this State or of any other State of the United States, having the legal authority to issue the same, and such securities may be withdrawn, from time to time when mortgaged securities of corresponding value shall be deposited as provided in this act, or when securities of like character are substituted therefor, or when the same shall have been paid or are required for foreclosure or suit; and it shall be the duty of the public examiner from time to time to examine such association to ascertain whether or not its securities are deposited as required by this act.

66 "Provided, that whenever required by the laws of any other State or Territory, or nation, all securities taken in such State, Territory or nation, organized under the laws of this State and subject to the provisions of this act, and other securities sufficient to allow such association to enter and do business in such State, Territory or nation, may be deposited with some officer authorized to receive the same in such State, Territory or nation, under the laws thereof, to the benefit of its members and creditors; and to this end, upon the presentation to the public examiner of a duly authenticated copy of a resolution of the board of directors of any such association, having on deposit with the State treasurer or a duly chartered trust company securities in excess of $25,000, demanding the transfer and specifying the securities to be transferred, or the amount thereof, to any other State, Territory or nation, for the purpose of enabling such association to comply with the laws thereof, it shall be the duty of the public examiner to cause such transfer to be made, the expense of making such transfer shall be borne by the association requiring the same, and a receipt shall be taken by the officer or trust company making the transfer, and filed and kept in the office from which the securities are transferred in lieu thereof. But the securities kept on deposit in this State by any such association, as required by this act, shall at no time be reduced in amount by such transfer, or otherwise, below $25,000; and in every case where securities taken in another State, Territory or nation are deposited in such State, Territory or nation, or when other securities are removed from this State to such other State, Territory or nation for the purpose aforesaid, the association to which they belong shall make a certificate of such depository, showing the amount and character of such deposit which certifi-

67 cate shall be filed with the public examiner, and renewed annually, together with statement, verified by the affidavit of some officer of such association who has knowledge of the facts, showing all the securities taken or deposited by such association in such State, Territory or nation, at the time of the filing of such cer-

tificate; and, in case any securities taken in such State, Territory or nation are not deposited there, then the same shall be deposited in this State as required by this act."

That said last above quoted provision went into force on June 1st, 1891, and has been the law of the State of Minnesota ever since, being section 2860 of the statutes of Minnesota for 1894.

That the above and foregoing provisions of the laws of the State of Minnesota were not complied with by said American Building and Loan Association or said American Savings and Loan Association, but that on the 29th day of August, 1891, and on the 16th day of February, 1892, and on the 20th day of September, 1892, and on the 8th day of December, 1893, the said association, through its president and secretary, made its request of the public examiner of the State of Minnesota to be permitted to withdraw certain of its mortgages on deposit with the State treasurer of the State of Minnesota for the purpose of depositing the same with the State treasurer of the State of Wisconsin, copies of which request are attached hereto, marked Exhibit "G."

That the said public examiner gave his permission that the said mortgages specified in said requests marked Exhibit "G" might be withdrawn by said association, and the same were withdrawn from the State treasurer of the State of Minnesota.

That the mortgages belonging to the American Savings and Loan Association in the possession of said State treasurer, S. A. Peterson, at the time of making and filing of plaintiff's complaint herein aggregated in value the sum of $145,234.

68 That prior to the 11th day of July, 1889, there *was* delivered to said S. A. Peterson mortgages of said association aggregating in value the sum of $103,060, of which there remained in his hands at the time of making and filing of plaintiff's complaint, as a part of the mortgages first above stated, mortgages aggregating in value the sum of $20,784, which said mortgages are more fully described in a list attached hereto, marked Exhibit "H."

That between the 11th day of July, 1889, and the first day of January, 1894, there *was*, of the mortgages above stated as in the possession of said State treasurer at the time of the making and filing of plaintiff's complaint, delivered to him at various times mortgages aggregating in value the sum of $80,850.00, which said mortgages delivered between said dates are more fully described in the list attached hereto, marked Exhibit "I," and that after said first day of January, 1894, there was delivered to said State treasurer the remainder of said mortgages which were in his possession at the time of the making and filing of said complaint, aggregating in value of $43,600, the description of which said mortgages will more fully appear from the list attached hereto, marked Exhibit "J."

That of the mortgages delivered to said State treasurer subsequent to the 11th day of July, 1889, a large part thereof were delivered to him in lieu of mortgages in his possession prior to said date which had been by him surrendered to said association, and the remainder thereof were delivered to him as an addition to those delivered prior to said date.

That in said lists of mortgages, marked respectively Exhibits "H," "I," and "J," the names of the persons therein stated are the names of the mortgagors who were members of said association, and the name of the town or city is the name of the town or city which was the residence of said mortgagors, and the name of the State therein stated is the name of the State wherein the
69 property mortgaged is situate, and it is asked that said exhibits be made a part of this answer as fully and completely as if copied *in extenso* herein.

That all of said mortgages in the possession of said State treasurer were regular building and loan association mortgages, made and executed by shareholders and members of said association to said association to secure the payment by said members of their regular instalments of dues upon their stock, upon which said stock they had been granted an advancement or loan, and to secure the payment of the amount of said loan.

That the obligations, covenants, and conditions of all of said mortgages and the bonds which the same were given to secure were substantially alike, a copy of the form of said bonds and mortgages, omitting the parties' names and description, but containing all of the obligations and covenants, are attached hereto, marked respectively Exhibits "K" and "L."

That said mortgages were non-negotiable and could not be transferred by said association.

That said association, being a mutual building and loan association, had no power or authority at any time to pledge, transfer, assign, sell, or dispose of any of its mortgages, and that none of said mortgages were deposited with said State treasurer by said association, but were given and delivered to him by officers and employés of said association who were not authorized by said association to so deliver said mortgages to said State treasurer; that the officers and employés of said association so delivering said mortgages kept in the books of said association a statement or account of said mortgages so delivered to said State treasurer as aforesaid.

That for each mortgage delivered to said State treasurer, as aforesaid, a receipt in the following form was sent by him to said
70 association:

"Loan No. —.

Received of the American Savings and Loan Association of Minneapolis, Minnesota, as trustee, bond and mortgage for loan $—.

Prem. —.

Signed by —— ——,

—— ——,

State Treasurer.

—— ——.

Form 69."

That said mortgages and each of them held by said State treasurer at the time of the making and filing of the complaint herein were held by him wrongfully and without right or authority of law for said possession.

That the shareholders of said association had no knowledge whatever of the delivery of said mortgages to said State treasurer, nor did they at any time consent thereto or acquiesce therein.

That the only action ever taken by said association relative to making a deposit with the State treasurer of Wisconsin was taken by its board of directors upon the first day of May, 1889, at a call-meeting of said board, called by the president at the request of three members of the said board, the record of which said action, as the same appears in the minutes of said board of directors of said association, is as follows, to wit:

"May 1, 1889.—By J. H. Bishop: Resolved, That the State treasurer of Wisconsin be made a depository of the association for temporary convenience in complying with the laws of Wisconsin in regard to the deposit of securities, $100,000. Ayes—Stoneman, Swenson, Fundell, Bishop—4; nays—none. Adopted.

By F. P. Rundell: Resolved, That if any legal process affecting the American Building and Loan Association of Minneapolis, Minn., be served on the secretary of the State of Wisconsin, and a
71 copy thereof be mailed, postage prepaid, to said association, addressed to its home office, then such service and mailing of such process shall have the same effect as personal service on such associatton in the State of Minnesota. Ayes—Stoneman, Swenson, Rundell, Bishop—4; nays—none. Adopted.

By F. P. Rundell: Resolved, That the association comply with the Wisconsin law as soon as possible. Ayes—Stoneman, Swenson, Rundell, Bishop—4. Nays—none. Adopted. Adjourned.

J. H. BISHOP, *Sec'y.*"

That at the time of the making and filing of the complaint herein the said association had shareholders residing in the State of Wisconsin to the number of 246, which said shareholders had paid into the loan fund of said association the aggregate sum of $66,457.37, and into the expense fund of said association the aggregate sum of $12,187.87.

That of said shareholders 162 had become members of said association and shareholders therein prior to the 19th day of April, 1889, which said date is the date upon which the law of the State of Wisconsin authorizing and requiring the deposit of securities with the State treasurer of Wisconsin by foreign building and loan associations in order to entitle them to do business in said State was approved, and prior to the 6th day of May, 1889, which said last date is the date upon which the first of said mortgages *were* delivered to said State treasurer; that the aggregate amount paid *in* by said 162 shareholders into the loan fund of said association is $51,297.81, and into the expense fund, $7,849.10.

That of the total number of shareholders residing in the State of Wisconsin 84 have become members of said association since said 19th day of April, 1889, and since said 6th day of May, 1889, which said 84 shareholders have paid into the loan fund of said
72 association the aggregate sum of $15,159.56, and into the expense fund thereof the aggregate sum of $4,338.77.

That said association transacted its usual and ordinary business with said shareholders residing in Wisconsin, including the receiving of monthly dues from them and the issue and transfer of shares of stock, during all of the time when said mortgages were in the possession of said State treasurer of Wisconsin, and up to the time of the appointment of a receiver of said association by the district court of Hennepin county, as hereinafter set forth.

That of the said 246 shareholders residing in the State of Wisconsin at the time of the making and filing of the complaint herein 25 had obtained unsecured loans or advancements upon their stock to the aggregate sum of $7,198.90, a detailed and specific list whereof is attached hereto, marked Exhibit "M."

That of said 246 shareholders residing in the State of Wisconsin at the time of the making and filing of the complaint herein 16 had at the time of the making and filing of the complaint herein obtained advancements or loans upon their said shares of stock, for which they had given real-estate mortgages to secure, in the aggregate sum of $9,850.00, a detailed and specific list whereof is attached hereto, marked Exhibit "N."

That all of said shareholders resident in the State of Wisconsin, on becoming members and shareholders in said association, subscribed for their shares of stock in the same manner and received like certificates thereof as did all the other shareholders of said association, wheresoever residing.

That during the period when said stock was subscribed for by and issued to said shareholders residing in Wisconsin said association used eight several and different forms of stock certificates, which said eight different forms are each attached hereto and marked Exhibits "O," "O 1," "O 2," "O 3," "O 4," "O 5," "O 6," and "O 7."

73 That said association was a mutual corporation, and that each shareholder therein, including this plaintiff, and all the shareholders in Wisconsin enjoyed and were subject to like rights, privileges, immunities, and liabilities.

That under its articles of incorporation heretofore set out none of the shareholders of said association did or could have higher or superior rights than those had or enjoyed by all.

That said association at the time of the appointment of this defendant as its receiver, hereinafter more fully set forth, had shareholders in 35 States, owned real estate in 19 States, and held mortgages on real estate in 29 States.

That sections 5900, 5901, and 5902 of the General Statutes of Minnesota, 1894, read as follows:

"SECTION 5900. Whenever any corporation having banking powers, or the power to make loans on pledges or deposits, or authorized by law to take insurances, becomes insolvent, or unable to pay its debts, or neglects or refuses to pay its notes or evidences of debt on demand, or violates any of the provisions of its act or acts of incorporation, or of any other law binding on such corporation, the district court may, by injunction, restrain such corporation and its officers from exercising any of its corporate rights, privileges and

franchises, and from collecting or receiving any debts or demands, and from paying out, or in any way transferring or delivering, to any person, any of the moneys, property or effects of such corporation, until such court shall otherwise order.

SECTION 5901. Such injunction may be issued on the complaint of the attorney general in behalf of the State, or on the complaint of any creditor or stockholder of such corporation. Whenever such injunction issues against any bank for any violation of its charter, on the complaint of any creditor, the court shall proceed to final judgment in such case, and adjudge a forfeiture, if the proof
74 is sufficient, notwithstanding such creditor may settle with such corporation, and relinquish his claim against said corporation; and in all such cases, the attorney general, or any creditor, shall have the right to appear and prosecute such action; and such action shall not be discontinued, if either of them so appear and prosecute the same.

SECTION 5902. The court, in any stage of the proceedings, may appoint one or more receivers to take charge of the property and effects of such corporation, and to collect, sue for and recover the debts and demands that are due, and the property that belongs to such corporation, who shall in all respects be subject to the control of the court."

That on the 14th day of January, 1896, said association having violated certain laws of the State of Minnesota binding upon it, and having become insolvent and incapable of effectuating the object for which it was organized and created, and incapable of carrying out its contracts and obligations, this defendant, William D. Hale, was duly appointed, pursuant to the above and foregoing provisions of the statute of Minnesota, by the district court of Hennepin county, Minnesota, which said county was the domiciliary county of said association, the receiver of said association, in an action wherein The State of Minnesota, upon the relation of H. W. Childs, its attorney general, was plaintiff, and said association was defendant.

That in its order appointing said defendant as receiver the said court therein authorized and required the said receiver to take charge of all the property and effects of said association; to collect, sue for, and recover all of the debts and demands that are due said association, and to manage and administer all the affairs of said association under the direction of said court; that afterwards said action was duly tried and heard by said court, and upon
75 appeal duly heard and determined by the supreme court of said State, and thereafter such proceedings were had that on the 18th day of June, 1896, this defendant's appointment theretofore made was duly confirmed and made permanent by the order and decree of said district court of Hennepin county, Minnesota.

That pursuant to and in conformity with the said decree and order of court the said association executed and delivered to this defendant deeds of all the real estate owned by it and due and sufficient assignments of all its mortgages and other property, including

said mortgages herein referred to as being in the possession of said S. A. Peterson as treasurer of the State of Wisconsin.

That said defendant herein, upon his first appointment, as heretofore alleged, and thereafter upon the confirmation and making permanent of said appointment, duly qualified as such receiver and upon the order of the court promptly proceeded to and is now engaged in the collection of the assets of said association, wheresoever the same may be found, with the purpose of reducing the same to possession and distributing them equitably among all the shareholders of said association, wheresoever the same may reside.

For further answer and counter-claim herein this defendant alleges that such proceedings have been had in this action that heretofore, to wit, on the 5th day of February, 1896, one M. C. Clarke was by order of this court appointed a receiver of said association for the State of Wisconsin, and the defendant herein, S. A. Peterson, State treasurer of the State of Wisconsin, was by said court ordered and directed to turn over all of the said mortgages referred to in plaintiff's complaint and heretofore in this answer fully set out and described to the said Clarke so appointed as receiver; that the said Peterson, pursuant to said order of this
76 court, has turned over and delivered all of said mortgages to said Clarke, and that said Clarke is proceeding to collect the same, and will, unless interfered with by this court, distribute the proceeds of the same to the shareholders resident in Wisconsin, thereby giving to said Wisconsin shareholders a preference over the other shareholders of said association.

That this defendant has made an inventory and had an appraisement of all of the assets of said association, including the mortgages now in the possession of said M. C. Clarke, and that said assets are not sufficient to pay to all the shareholders of said association dollar for dollar of the amount which they have paid in or, as he believes, any larger or greater sum than forty per cent. thereof; that if the said M. C. Clarke, acting as receiver aforesaid, shall collect said mortgages and distribute the proceeds thereof to the Wisconsin shareholders, the said Wisconsin shareholders will receive dollar for dollar of the amount which they have paid into said association, and thereby be constituted a preferred class of shareholders of said association, which is against equity and good conscience and contrary to the purposes of said association as defined by its articles of incorporation, by-laws, and contracts of membership with its shareholders.

That the law under which it is alleged said mortgages were deposited was intended to protect said Wisconsin shareholders in all their rights growing out of their membership in said association and not for the purpose of extending, altering, or changing said rights; that the purpose for which any deposit made by said association with said State treasurer under said law was made terminated and was at an end when said association became insolvent and incapable of carrying out its contracts and effectuating the purpose of its being.

77 That the petition of this defendant for leave to be made a party to this action was made by him by the permission and direction of the district court of Hennepin county, Minnesota.

Wherefore this defendant prays:

First. That this court may by its order and decree direct said receiver, M. C. Clarke, to turn over and deliver said mortgages held by him, as aforesaid, to this defendant, to be by him collected, and the proceeds equitably distributed to all the shareholders of said association, wheresoever they may reside, and for such other relief as to a court of equity may seem just and proper.

Second. That the plaintiff take nothing by this action and that this defendant have judgment for his costs and disbursements herein.

EUGENE G. HAY,
Attorney for William D. Hale, as Receiver of the American Sav. and Loan Association, Minneapolis, Minn.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

William D. Hale, being first duly sworn, upon oath deposes and says that he is the receiver of The American Savings and Loan Association, one of the defendants in the above-entitled action; that he has read the foregoing answer, and knows the same to be true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

WILLIAM D. HALE.

Subscribed and sworn to before me this 29th day of January, 1897.

[SEAL.] C. H. VAN CAMPEN,
Notary Public, Hennepin County, Minnesota.

78 EXHIBIT "A."

Articles of Incorporation of the American Building and Loan Association.

For the purpose of forming a corporation under the laws of the State of Minnesota, we, the undersigned, hereby adopt the following articles of incorporation:

First. The name of this corporation shall be the American Building and Loan Association, and the principal place for the transaction of its business shall be in the city of Minneapolis, in the State of Minnesota.

Second. The general nature of the business of this association shall be to assist its members in saving money, and in buying and improving real estate, which shall be done by accumulating a fund of money by payments for stock issued to its members, and loaning the said fund with accumulations to such members; also to acquire, hold and transfer all such real estate, as may be necessary or con-

venient for the purpose of conducting, carrying on or disposing of the business of the association.

Third. This corporation shall commence on the fifteenth day of April, 1887, and continue thirty years.

Fourth. The amount of capital stock of this corporation shall be ten million of dollars, which shall be divided into one hundred thousand shares of one hundred dollars each. The amount of the stock and the number of shares may be increased at any regular or special meeting of the stockholders. The capital stock shall be paid in in monthly instalments of fifty cents for each share, in such manner and at such time as shall be prescribed in the by-laws. For the purpose of securing business and paying the expenses of this association, the board of directors may require the payment by the members of such admission fees, transfer fees, withdrawal fees, fines, monthly and semi-annual payments or dues as they shall prescribe in the by-laws.

Fifth. The highest amount of indebtedness or liability to which this corporation shall at any time be subject shall be twenty-five thousand dollars.

Sixth. The officers of this corporation shall be a president, secretary, treasurer, and a board of six directors. The president, secretary and treasurer shall be *ex officio* members of said board of directors. The government of this corporation and the management of its affairs shall be vested in said officers and board of directors.

Seventh. The officers and directors of this corporation shall be elected at the annual meeting of the association on the last Tuesday in July in each year, and shall hold their offices for one year, and until their successors are elected.

Eighth. The names and places of residence of the persons forming this corporation are as follows, to wit: Charles B. Wright, Lars Swenson, F. B. Stoneman, F. P. Rundell, F. C. Lawrence and J. T. Perkins, all of whom reside in the city of Minneapolis, in the State of Minnesota.

Ninth. The names of the first board of directors of this corporation are as follows, to wit: Charles B. Wright, Lars Swenson, F. B. Stoneman, F. P. Rundell, F. C. Lawrence and J. T. Perkins. The first officers shall be: President, F. P. Rundell; secretary, F. C. Lawrence; treasurer, J. T. Perkins. These officers and directors shall hold office until the regular annual meeting on the last Tuesday in July, 1887.

Tenth. The board of directors may make and adopt by-laws not inconsistent herewith and may alter or amend the same at any regular or special meeting of such board by the vote of majority thereof.

Witness our hands and seals this 29th day of March, 1887.

F. P. RUNDELL. [SEAL.]
F. B. STONEMAN. [SEAL.]
LARS SWENSON. [SEAL.]
JAS. T. PERKINS. [SEAL.]
F. C. LAWRENCE. [SEAL.]
C. B. WRIGHT. [SEAL.]

Signed by all except C. B. Wright in the presence of—
A. T. ANKENY.
I. H. GREENE.

Signed by C. B. Wright in presence of—
H. A. WILD.
F. A. SMITH.

79 EXHIBIT "B."

Amended Articles of Incorporation of American Building and Loan Association.

I.

The name of this corporation shall be American Building and Loan Association, and the principal place for the transaction of its business shall be the city of Minneapolis, in the State of Minnesota.

II.

The general nature of its business shall be to assist its members in saving and investing money, and in buying and improving real estate and in procuring money for other purposes, by loaning or advancing, under the mutual building society plan, to such of them as may desire to anticipate the ultimate value of their shares, funds accumulated from the monthly contribution of its stockholders, and also such other funds as may from time to time come into its hands.

III.

This corporation commenced on the 15th day of April, 1887, and the period of its continuance shall be thirty (30) years thereafter.

IV.

The amount of capital stock of said corporation shall be fifty million dollars ($50,000,000.00), which shall be paid in monthly instalments of fifty (50) cents on each share in such manner and at such times as shall be prescribed by the by-laws; provided that said corporation may issue paid-up stock upon terms, rules and regulations to be provided by the by-laws. For the purpose of obtaining business, paying the expenses of this association, and securing its successful management, the members thereof shall pay such fees, monthly and semi-annual payments, or dues, as may from time to time be advisable, and under rules and regulations to be prescribed by the by-laws.

V.

The highest amount of indebtedness, or liability, to which this corporation shall at any time be subject, shall be five million dollars ($5,000,000.00).

VI.

The government of this corporation and the management of its affairs shall be vested in a board of seven (7) directors, each of whom

shall be stockholders. The directors shall choose a president, a vice-president, a secretary and a treasurer from among the stockholders, but it shall not be necessary for said officers to be directors. In case said officers are not directors, they shall have the privilege of attending at all meetings of the board of directors, and shall have due notice of all such meetings given them in the manner prescribed by the by-laws. These officers shall not be entitled to vote on questions submitted to the board unless they are directors.

VII.

The term of office of the directors of said corporation shall be four (4) years, and of the other officers two (2) years; provided, however, that the board of directors shall be divided into four classes, and each of the first three classes shall be composed of two directors, and the fourth class shall contain one director, and two directors shall be elected annually for three successive years, and one director on the fourth year, it being understood that the term of office of one class shall expire each year. Members having but one year to serve shall belong to the first class; members having two years to serve to the second class; members having three years to serve to the third class, and members having four years to serve to the fourth class. The election shall be held at the annual meeting of the association on the last Tuesday in July of each year. At the annual meeting in 1888, there shall be elected two directors of the first class, two directors of the second class, two directors of the third class, and one director of the fourth class.

The other officers of this corporation shall be elected at the annual meeting of the board of directors on each alternate year commencing with the year 1888. The meeting of the board of directors for the election of officers shall be held immediately after the annual meeting of the stockholders.

VIII.

The names and places of residence of the persons who formed this corporation are as follows, to wit:

Charles B. Wright, Lars Swenson, F. B. Stoneman, F. P. Rundell, F. C. Lawrence and J. T. Perkins, all of whom reside in the city of Minneapolis, in the State of Minnesota.

IX.

The first board of directors of this corporation was composed of Charles B. Wright, Lars Swenson, F. B. Stoneman, F. P. Rundell, F. C. Lawrence and J. T. Perkins.

X.

This corporation may transact business under these amended articles of incorporation whenever one million five hundred thousand dollars ($1,500,000.00) of said stock shall have been subscribed for.

80

XI.

The stock of this corporation may be issued in series, provided it shall seem best to the board of directors.

XII.

The by-laws of this corporation shall be adopted by the stockholders and shall not be amended, except at an annual or special meeting of said corporation, and by a majority vote of the stock outstanding.

XIII.

All stockholders must be acceptable to the board of directors.

XIV.

The board of directors may retire any stock after its maturity as prescribed by the by-laws.

XV.

This corporation may borrow money for the purpose of carrying out its objects to an amount not exceeding five million dollars ($5,000,000.00) at any one time.

XVI.

The directors of this corporation may enter into such contracts and agreement and appoint such agents for its business management as they may deem for the best interest of its affairs.

XVII.

The officers of this corporation shall execute all contracts and other documents authorized by the board of directors or provided for by the by-laws.

XVIII.

The capital stock of this corporation shall be divided into five hundred thousand shares of the par value of one hundred dollars ($100) each.

XIX.

The board of directors may sell and dispose of the mortgages held by this corporation whenever they may deem best, and as provided by the by-laws.

XX.

The board of directors may appoint an advisory board or boards, whenever they deem best under rules and regulations to be prescribed by the by-laws.

XXI.

Any stockholder may withdraw from the corporation upon terms provided by the by-laws.

81 EXHIBIT "C."

By-laws of the American Building and Loan Association of Minneapolis, Minn. Adopted July 3, 1888.

ARTICLE I.—*Members.*

SECTION 1. Any person may become a member of the American Building and Loan Association by taking stock therein and paying the admission fee, provided his application shall be accepted by the board of directors.

SEC. 2. No member shall be allowed to vote until all arrears are paid.

SEC. 3. No member who has borrowed money shall be allowed to vote on any question affecting the claim of the association against himself.

SEC. 4. Each member shall make his payments on stock in installments of sixty cents per month per share.

SEC. 5. On the death or legal disability of a member his legal representatives may withdraw his stock, or keep up the payments in the interest of his estate.

ARTICLE II.—*Stock.*

SECTION 1. Every stockholder shall receive from the secretary a certificate of stock signed by the secretary and the president.

SEC. 2. All stock shall be voted by shares. It shall be transferable only by written instrument signed by the vendor. But no transfer shall be operative or valid until entered on the books of the association and a transfer fee of fifty cents per share paid. Provided that in no case shall such fee be less than one dollar or more than three dollars on any one certificate. Such transfer shall not in any way exempt the person making it from any liabilities to the association created prior to the transfer.

SEC. 3. Shares upon which loans have been obtained cannot be transferred unless the property mortgaged as security is also transferred or the loan is repaid. In other cases shares, if in good standing, may be transferred at any time. But no stock shall be transferred until it stands clear on the books of the association.

SEC. 4. Stock may be withdrawn upon sixty days' notice as hereinbefore provided. Members may withdraw the installments paid on unpledged shares after two years from the date of the certificate provided that when a member dies his personal representatives may withdraw such shares at any time.

SEC. 5. Shares on which loans have been made may be withdrawn if the loan is paid, but not otherwise.

SEC. 6. If a share is withdrawn at any time before it matures the holder thereof will be entitled to receive the amount paid into the loan fund in monthly payments on such share, together with six per cent. annual interest less any losses to which it may be subject.

SEC. 7. If a share which has matured is withdrawn, the holder

thereof shall be entitled to receive one hundred dollars, together with all additional profits which may have been apportioned to it.

SEC. 8. Withdrawing stock shall be paid for in the order in which notice is given, but the association shall not be required to use in the payment thereof in any one month without the consent of the board of directors, more than one-half of the net receipts of the loan fund for that month.

SEC. 9. If the undivided profits on hand at any time are not sufficient to pay any loss that may occur, the balance shall be charged up to the share in good standing *pro rata* in proportion to the value thereof, and if any share is withdrawn the amount so charged shall be deducted from the amount due on such share.

SEC. 10. The shares of stock may be arranged and issued in series if the board of directors deem it advisable.

SEC. 11. Whenever in any case payments upon stock have been in arrears for six months or more such stock shall be sold at auction for the purpose of paying the arrearages. The surplus arising from such sale after paying the back monthly dues and fines shall be paid to the original owner. If the stock does not bring enough to pay what is due thereon, it shall be bid in by the association and cancelled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits. Whenever any stock is to be sold for arrearages a notice stating the time and place of such sale shall be mailed to the owner of such stock at least ten days before the date of sale. The sale may be adjourned from time to time as may seem best.

SEC. 12. Whenever any stock has reached maturity the board of directors may, if it shall appear to them to be of the best interests to the corporation, retire and cancel the same at its then value in such manner and under such regulations as may be deemed advisable.

SEC. 13. Any member may authorize another person by written proxy to vote his stock, provided that all proxies shall be filed with the president at least fifteen days before the opening of the meeting at which they are to be used. And provided further that no person shall cast more than 500 votes on proxies, and no officer of the association shall be allowed to hold any proxy.

ARTICLE III.—*Fees, Fines, and Monthly Payments.*

SECTION 1. The admission fee for all members shall be one dollar per share for ten or more shares; for a less number it shall be as follows:

One share	$2.00
Two shares	3.00
Three shares	4.00
Four shares	4.50
Five shares	5.00
Six shares	6.00
Seven shares	7.00
Eight shares	8.00
Nine shares	9.00

SEC. 2. Whenever a member withdraws his shares he shall pay a withdrawal fee of fifty cents per share, but in no case shall such a fee be less than one dollar or more than three dollars on any certificate.

SEC. 3. Whenever any stock is transferred a transfer fee of fifty cents per share shall be paid, provided that in no event shall such fee be less than one dollar or more than three dollars on any certificate.

SEC. 4. If any monthly payments are not paid when due a fine of ten cents per share shall be imposed for each and every month the payment may be in arrears.

SEC. 5. In case any member who has obtained a loan from the association upon improved property shall fail to renew his insurance forty-eight hours prior to the expiration thereof, he shall pay a fine of twenty-five dollars.

SEC. 6. In case any member who has obtained a loan from said association shall allow the time for the payment of assessments or taxes on the property as provided by law to pass, he shall pay a fine of ten dollars, and in case at any time he refuses to show his tax receipts, he shall pay a fine of five dollars.

SEC. 7. The payments on each share shall be sixty cents per month for each and every month until maturity, commencing one month from the date of the certificate. Payments shall be due each subsequent month on the day of the month on which the certificate is dated. Provided, however, that the board of directors may require the monthly payments on all or a portion of the stock outstanding to be paid on the same day of the month. Fifty cents per month per share shall be paid into the loan fund, and ten cents per month per share shall be devoted to operating expenses.

SEC. 8. All the admission, withdrawal and transfer fees shall be devoted to the payment of operating expenses.

SEC. 9. Any stockholder, if he so desires, may make his monthly payments in advance, and when a payment for six months or more in advance is made at any one time the shareholder shall be entitled to receive such interest or discount on account of the advance payment as the board of directors may deem advisable.

SEC. 10. All money due from members to the association or from it to the members shall be payable at the home office in Minneapolis, Minnesota.

SEC. 11. Paid-up stock may be issued and sold at the price of fifty dollars a share. A dividend of one dollar and fifty cents per share may be paid semi-annually, on such stock which dividend shall be deducted from the profits apportioned to such share. There may be used for expenses on such stock, three dollars per share the first year, and one dollar per year per share thereafter. Whenever the amount standing to the credit of a share equals one hundred dollars, such share shall be deemed to have matured, and the holder thereof shall be entitled to withdraw the same and to receive one hundred dollars therefor. Paid-up stock cannot be withdrawn until after two years from the date of issue, and if withdrawn before maturity shall entitle the holder to receive fifty dollars per share and a por-

tion of the profits, if the board of directors shall so determine. Provided, however, that settlements shall always be in accordance with the contract contained in the certificate of stock held by the member. Holders of paid-up stock can never be assessed or called upon for any payments other than the fifty dollars per share for which such stock is sold.

SEC. 12. Paid-up stock on which dividends shall not be paid may be sold for forty dollars per share. Such stock shall be subject to the rules contained in the preceding sections of these by-laws, except that no dividends shall be paid thereon, and if withdrawn before maturity the holder shall be entitled to receive forty dollars per share with six per cent. interest. This stock cannot be withdrawn until after two years from the date of certificate.

ARTICLE IV.—*Funds.*

SECTION 1. The receipts of said association shall be divided into two classes, which shall be called respectively the loan fund and the expense fund.

SEC. 2. The expense fund shall consist of all admission, withdrawal, transfer, insurance, abstract and attorneys' fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payments on stock, and this fund so constituted shall be devoted to the payment of operating expenses and said insurance and taxes.

SEC. 3. The loan fund shall consist of all receipts which do not go to the expense fund, as hereinbefore provided. No part of the loan fund can be used for expenses except for taxes thereon.

SEC. 4. No money can be drawn from the loan fund except by draft drawn by an agent of the corporation on the treasurer and accepted by the president and the secretary, or on a check signed by the president and treasurer, and then only with the approval of the board of directors.

SEC. 5. In case the funds subject to loan are not called for
83 by any member entitled thereto within ninety days after the same have been offered for bids, and in case they are not otherwise disposed of, if the board of directors deem it to the best interest of said association they may invest the same in United States bonds, for the mutual benefit of the members.

SEC. 6. On the first day of the months of January, April, July and October in each year, all undivided profits shall be apportioned and credited to the shares in force.

SEC. 7. If any money remains in the expense fund after paying the salaries of officers, as fixed by the board of directors, and the other expenses of the association, the surplus so remaining shall be turned into the loan funds as profits.

ARTICLE V.—*Loans.*

SECTION 1. The funds of said corporation which shall belong to the loan fund shall be loaned to the member offering to pay the

highest premium therefor in addition to the stipulated six per cent. per annum upon such terms and security as the board of directors may from time to time approve; provided that the rate of interest shall be six per cent. per annum. Payments of interests and premium shall be made either in advance at the time the loan is made, or monthly, as the directors may deem best. All other payments shall be made monthly. Loans shall be made at the regular monthly meeting of the board of directors on the second Thursday in each month, when there are sufficient funds therefor, and as much oftener as may appear advisable to such board.

SEC. 2. A member desiring a loan shall file written application therefor with the president, accompanied by a sealed bid stating the amount of premium per share in addition to six per cent. interest which the applicant is willing to pay for such loan. But no loan shall be granted to a member until three months from the date of his certificate of stock unless the board of directors shall for good reason determine to the contrary.

SEC. 3. Each bid shall be numbered in the order of its receipt by the president, and when two or more are made at the same premium they shall take precedence in the order of their receipt, other things being equal. Provided that where the same premium is offered by two or more members, those having the best security shall be given the preference.

SEC. 4. Bids shall be opened on the second Thursday of each month, and at such other times as the board of directors may deem advisable. Any member, or his agent or attorney, may be present when they are opened. All bids shall be kept on file, and after being opened shall be subject to the inspection of any person interested.

SEC. 5. A member desiring a loan shall advance ten dollars for the purpose of securing the payment of the expense of making the loan and the examination of the title, unless that amount already stands to the credit of his stock in the loan fund. An abstract of title must be furnished in all cases by the applicant, and he must pay for the examination of the same, for the record of the mortgage and all other expenses connected with the loan.

SEC. 6. If the loan is granted, the expenses thereof, unless otherwise provided for, may be deducted from the amount of the loan. If it is rejected because the security is not satisfactory, the expense incurred and one month's interest on said loan may be charged up against the stock of the applicant, and unless otherwise paid it may be deducted from the amount standing to the credit thereof.

SEC. 7. Loans on real estate may be repaid at any time, on thirty days' notice. If a borrower thereon neglects to pay any interest, dues or monthly payments for a period of six months from the time the same shall be due, or if he neglects to pay his insurance, taxes or assessments on the day that they fall due, then the whole principal mentioned in the mortgage and note or bond shall at once become due and payable without notice, and proceedings may be commenced forthwith to foreclose such mortgage or to collect said

bond or note in such manner as the board of directors may deem best.

SEC. 8. All buildings on which loans are made shall be kept insured by the owner at his own expense, and the insurance made payable to the association as its interests may appear. All policies shall be renewed and turned over to the association at least forty-eight hours before expiration. But in case the owner shall fail to obtain such insurance or renewal, or in case he shall desire said association to obtain it for him, this shall be done by the agents of said corporation, and the owner shall pay the expenses thereof.

SEC. 9. Members obtaining loans shall execute such notes or bonds and mortgages as shall be required by the board of directors.

SEC. 10. After shares have been in force two years, the owner may obtain a loan on them without other security, but not to exceed seventy-five per cent. of their value at the time the loan is made.

ARTICLE VI.—*Officers.*

SECTION 1. President.—The president shall preside at all meetings of the corporation and of the board of directors. He shall sign, as soon as practicable after sale, certificates for all stock sold by said corporation or its agents. He shall accept forthwith, upon presentation, all drafts drawn by agents of said corporation on the treasurer for money to be paid out for loans, insurance and taxes, provided always the board of directors has approved said loans. He shall execute promptly satisfactions of mortgages owned by said
84 corporation whenever they are paid, and as soon as the board of directors shall have decided upon a sale of property belonging to said corporation he shall execute all necessary conveyance therefor.

SEC. 2. Vice-president.—The vice-president shall perform all the duties of the president during his absence or disability.

SEC. 3. Secretary.—The secretary shall, in conjunction with the president, accept forthwith upon presentation, all drafts drawn on the treasurer by the agents of the corporation for money to be paid out for loans, insurance or taxes, provided said loans have been approved by the board of directors. He shall sign, in conjunction with the president, certificates of stock and other instruments which the latter is required to execute by the terms of these by-laws. He shall attend all meetings of the corporation and of the board of directors, and shall keep full, accurate and complete minutes of all their meetings in books obtained for that purpose.

SEC. 4. Treasurer.—The treasurer shall, within a reasonable time after the presentation, pay all drafts drawn on him by agents of the corporation and accepted by the president and secretary. He shall have charge of the loan fund and shall promptly deposit it in such bank or banks as the board of directors may designate for that purpose. All other funds which may from time to time come into his hands he shall promptly turn over to such person or persons as the board of directors may have ordered. He may, with the president, sign checks on the loan fund, provided the same have the approval

of the board of directors. He shall render to the board of directors a statement of the condition of the loan fund whenever requested by them so to do.

SEC. 5. Board of directors.—The board of directors shall fill all vacancies which may occur among either the officers or directors, provided that every vacancy in the said board shall be filled at its next meeting. Said board may enter into such contracts and agreements and appoint such agents for its business as it may deem for the best interests of the affairs of the corporation. For the purpose of obtaining a successful business management it may turn over to and pay the person or persons with whom it contracts, or the agent or agents which it appoints what is known as the expense fund, or such portion thereof as is deemed best, provided that all salaries and all expenses of said corporation, aside from insurance and taxes on property on which loans are outstanding, shall be wholly paid by said expense fund, and the person so contracted with or the agents so employed must rely solely for their compensation upon the balance remaining after paying such expenses, and no part of the loan fund can be used for such expenses or compensation or salaries. Such contract or contracts may cover such a period and contain such covenants as the board of directors may deem advisable.

SEC. 6. All officers shall insure to said association the faithful performance of their duties by such guarantees, securities or bonds of indemnity, as the board of directors may from time to time require.

SEC. 7. The officers and directors shall make no arbitrary or unreasonable delays in performing their respective duties so as to embarrass said corporation in its practical workings, and in case they or any of them do so the board of directors may remove him or them by a majority vote after he has been heard.

SEC. 8. Advisory board.—Advisory boards may be appointed by the board of directors to such an extent and at such times as it may deem best. They shall advise with the board of directors upon important topics whenever called upon to do so, and shall furnish said directors with such information relating to the matters of the association in their particular localities, as they may from time to time require.

SEC. 9. The officers and directors of said association shall receive such salaries as the board of directors may deem advisable, provided the same must always be paid from the expense fund.

SEC. 10. All contracts made by or with this association shall be deemed to have been made at the home office in Minneapolis, Minnesota.

ARTICLE VII.—*Elections.*

SECTION 1. All elections shall be by ballot. Every member shall be entitled to one vote for each share of stock that he holds.

ARTICLE VIII.—*Meetings.*

SECTION 1. The annual meeting of the stockholders of said corporation shall be held on the last Tuesday of July in each year. The

annual meeting of the board of directors shall be held immediately after the annual meeting of the stockholders in each year.

SEC. 2. The board of directors shall meet on the second Thursday of each and every month, and as much oftener as may be deemed advisable.

SEC. 3. Special meetings of the corporation or of the board of directors may be called at the written request of three directors.

SEC. 4. At least thirty days prior to any special or annual meeting of the corporation, a notice stating the time and place of such meeting shall be deposited in the post-office at Minneapolis, Minnesota, directed to each member at his address as the same appears on the books of the association, and shall be deemed a legal and sufficient notice of any annual or special meeting. Information of any other matter of which members need notice may be given in a similar manner. In case of a change of post-office address of a member, notice thereof shall at once be given to the secretary.

85 SEC. 5. Members present in person or by proxy entitled to one thousand votes shall constitute a quorum at any annual or special meeting of the association.

ARTICLE IX.—*Local Boards.*

SECTION 1. Whenever sufficient stock has been sold in any town to make it advisable, the members residing in each town may organize a local board or branch of the association. The officers of the local organization shall consist of a president, secretary, treasurer, attorney, and a board of five directors. These officers shall hold office one year and until their successors are elected.

SEC. 2. As it frequently happens that a meeting of the local members cannot be held as soon as it is desirable, the traveling agents of the association are given authority to appoint the first officers of the local board. Provided, however, that officers so appointed shall only hold office until the members of the local board meet and elect their successors.

SEC. 3. It shall be the duty of the officers of the local board to pass on all applications for loans which are received by the association from members residing in the town where such local board is located, and to protect the interests of the association in all practicable ways.

SEC. 4. Members may, if they so desire, make monthly payments on stock to the local treasurer. But such local treasurer shall be deemed to be the agent of the members, and not of the association.

SEC. 5. As soon as the officers of the local board have been appointed or elected and the names of such officers have been certified to the association by a traveling agent or by the local secretary, a local board charter shall be issued to such board.

SEC. 6. The president of the local board shall call a meeting thereof whenever three members shall request him so to do.

ARTICLE X.

SECTION 1. No amendments shall be made to these by-laws unless previously endorsed by resolution of the board of directors and adopted by a majority vote of the stock of said corporation.

86 EXHIBIT "D."

Revised By-laws of the American Building and Loan Association of Minneapolis, Minn.

Resolved, That the by-laws of this association be and the same hereby are amended so as to read as follows, to wit:

ARTICLE I.—*Members.*

SECTION 1. Any person may become a member of the American Building and Loan Association by taking stock therein and paying the admission fee, provided his application shall be accepted by the board of directors.

SEC. 2. No member shall be allowed to vote until all arrears are paid.

SEC. 3. No member who has borrowed money shall be allowed to vote on any question affecting the claim of the association against himself.

SEC. 4. Each member shall make his payments on stock in installments of sixty cents per month per share.

SEC. 5. On the death or legal disability of a member, his legal representatives may withdraw his stock, or keep up the payments in the interest of his estate.

ARTICLE II.—*Stock.*

SECTION 1. Every stockholder shall receive from the secretary a certificate of stock with the signatures of the president and secretary, or fac-similes thereof, appended thereto.

SEC. 2. All stock shall be voted by shares. It shall be transferable only by written instrument signed by the vendor. But no transfer shall be operative or valid until entered on the books of the association and a transfer fee of 50 cents per share paid. Provided, that in no case shall such fee be less than one dollar or more than three dollars on any one certificate. Such transfer shall not in any way exempt the person making it from any liabilities to the association created prior to the transfer.

SEC. 3. Shares upon which loans have been obtained cannot be transferred unless the property mortgaged as security is also transferred or the loan is repaid. In other cases shares, if in good standing, may be transferred at any time. But no stock shall be transferred until it stands clear on the books of the association.

SEC. 4. Shares on which loans have been made may be withdrawn if the loan is paid, but otherwise not.

SEC. 5. If any stockholder becomes indebted to the association in any way, such debt shall be a first lien upon the stock of such mem-

ber, and such stock cannot be transferred or withdrawn until said debt is paid.

SEC. 6. If a share which has matured is withdrawn, the holder thereof shall be entitled to receive one hundred dollars, together with all additional profits which may have been apportioned to it.

SEC. 7. Withdrawing stock shall be paid for in the order in which notice is given, but the association shall not be required to use in the payment thereof in any one month, without the consent of the board of directors, more than one-half of the net receipts of the loan fund for that month.

SEC. 8. If the undivided profits on hand at any time are not sufficient to pay any loss that may occur, the balance shall be charged up to the shares in good standing *pro rata* in proportion to the value thereof, and if any share is withdrawn the amount so charged shall be deducted from the amount due on such share.

SEC. 9. The shares of stock may be arranged and issued in series if the board of directors deem it advisable.

SEC. 10. At any time before or after the maturity of any share the board of directors may, if it shall appear to them to be for the best interests of the corporation, retire and cancel the same at its then value in such manner and under such regulations as may be deemed advisable.

SEC. 11. Any member may authorize another person by written proxy to vote his stock, provided that all proxies shall be filed with the president at least fifteen days before the opening of the meeting at which they are to be used. And provided further that no person shall cast more than 500 votes on proxies, and no officer, agent or employee of the association shall be allowed to hold any proxies.

ARTICLE III.

Fees, Fines, and Monthly Payments.

SECTION 1. The admission fee for all members subscribing for installment stock shall be one dollar per share for five or more shares; for a less number it shall be as follows:

One share	$2.00
Two shares	3.00
Three shares	4.00
Four shares	4.50

SEC. 2. Whenever any stock is transferred, an admission fee of fifty cents per share shall be paid by the purchaser, provided that in no event shall such fee be less than one dollar or more than three dollars on any certificate.

SEC. 3. If any monthly payment is not paid when due a fine of ten cents a share shall be imposed for each and every month the payment may be in arrears.

SEC. 4. Any stockholder, if he so desires, may make his monthly payments in advance, and when a payment for six months or more in advance is made at any one time the shareholder shall be entitled to receive such interest or discount on account

87

of the advance payment as the board of directors may deem advisable.

SEC. 5. All money due from members to the association or from it to the members shall be payable at the home office in Minneapolis, Minn.

SEC. 6. Paid-up stock may be issued and sold at the price of twenty-five dollars per share, which shall include the admission fee. A dividend of seventy-five cents per share may be paid semi-annually, which shall be deducted from the profits belonging to such share. Whenever the amount standing to the credit of a share equals one hundred dollars, such share shall be deemed to have matured, and the holder thereof shall be entitled to withdraw the same and to receive one hundred dollars therefor.

SEC. 7. Paid-up stock, on which no dividend shall be paid, may be sold for twenty dollars per share, including admission fee. The entire profits belonging to such stock shall be credited to the same every three months until such stock matures.

SEC. 8. The admission fee on paid-up stock shall be two dollars per share, and there may be set apart for expenses, in addition to the admission fee, one dollar per share per year.

ARTICLE IV.—*Funds.*

SECTION 1. The receipts of said association shall be divided into two classes, which shall be called respectively the loan fund and the expense fund.

SEC. 2. The expense fund shall consist of all admission fees and such part of the monthly payments as may be deducted for expenses, not exceeding one dollar per share per year on stock in class "B," and one dollar and twenty cents per share per year on stock in class "A."

SEC. 3. The loan fund shall consist of all receipts which do not go to the expense fund as hereinbefore provided. No part of the loan fund can be used for expenses, except for taxes.

SEC. 4. No money can be drawn from the loan fund, except on a check signed by the president and treasurer, and then only for loans on investments approved by the board of directors or the loan committee.

SEC. 5. For all money to be disbursed by the treasurer from either the loan fund or expense fund a warrant or order on the treasurer shall be drawn and signed by both the president and secretary.

SEC. 6. On the first days of the months of January, April, July, and October in each year, all undivided profits shall be apportioned and credited to the shares in force.

SEC. 7. If any money remains in the expense fund in excess of $1,000, at the close of the fiscal year, after paying the salaries of officers as fixed by the board of directors and the other expenses of the association, the surplus in excess of $1,000 so remaining, shall be turned into a fund which shall be called a contingent fund, and this fund shall be held separate from the loan fund, although the money shall be invested in loans and the profits of the loans thus

made shall go to the members. The fund itself shall be held to meet contingencies, such as losses on loans or any other purpose necessary to use money over and above what is received through the expense fund.

ARTICLE V.

SECTION 1. The funds of said corporation which shall belong to the loan fund shall be loaned to the member offering to pay the highest premium therefor in addition to the stipulated six per cent. per annum, upon such terms and security as the loan committee may from time to time approve, provided that the rate of interest shall be six per cent. per annum. Payments of interest and premium shall be made either in advance at the time the loan is made or monthly as the directors may deem best. All other payments shall be made monthly. Loans should be made at the regular monthly meeting of the board of directors on the second Thursday in each month, when there are sufficient funds therefor, and as much oftener as may appear advisable to such board.

SEC. 2. A member desiring a loan shall file written application therefor with the association, accompanied by a sealed bid, stating the amount of premium per share, in addition to six per cent. interest, which the applicant is willing to pay for such loan. But no loan shall be granted to a member until three months from the date of his certificate of stock, unless the board of directors shall, for a good reason, determine to the contrary.

SEC. 3. Bids shall be opened on the second Thursday of each month, and at such other times as the board of directors may deem advisable. Any member, or his agent or attorney, may be present when they are opened. All bids shall be kept on file, and after being opened shall be subject to the inspection of any person interested.

SEC. 4. A member desiring a loan shall advance ten dollars for the purpose of securing the payment of the expense of making the loan and the examination of the title, unless that amount already stands to the credit of his stock in the loan fund. An abstract of title must be furnished in all cases by the applicant, and he must pay for the examination of the same, for the record of the mortgage, and all other expenses connected with the loan.

SEC. 5. If the loan is granted, the expenses thereof, unless otherwise provided for, may be deducted from the amount of the loan. If it is rejected because the security is not satisfactory, the expense incurred and one month's interest on said loan may be
88 charged up against the stock of the applicant, and unless otherwise paid it may be deducted from the amount standing to the credit thereof.

SEC. 6. Loans on real estate may be repaid at any time on thirty days' notice. If a borrower neglects to pay any interest, dues or monthly payments for a period of two months from the time the same shall be due, or if he neglects to pay his insurance, taxes or assessments on the day that they fall due, then the whole principal mentioned in the mortgage, and note or bond shall at once become

due and payable without notice, and proceedings may be commenced forthwith to foreclose such mortgage or to collect said bond or note in such manner as the board of directors may deem best.

SEC. 7. All buildings on which loans are made shall be kept insured by the owner at his own expense, and the insurance made payable to the association as its interest may appear. All policies shall be renewed and turned over to the association at least forty-eight hours before expiration. But in case the owner shall fail to obtain such insurance or renewal, or in case he shall desire said association to obtain it for him, this shall be done by the agents of said corporation, and the owner shall pay the expenses thereof.

SEC. 8. Members obtaining loans shall execute such notes or bonds and mortgages as shall be required by the board of directors.

SEC. 9. After shares have been in force two years, the owner may obtain a loan on them without other security, but not to exceed seventy-five per cent. of their value at the time the loan is made.

SEC. 10. A loan committee, consisting of five directors, shall be appointed by the board of directors, and no loan shall be granted unless the security offered therefor shall be approved by three members of said committee.

SEC. 11. No member can obtain a loan for a greater amount than the par value of his stock, nor in excess of fifty per cent. of the value of the real estate offered as security.

SEC. 12. Every borrower must assign to the association, as collateral security for his loan, one share of stock for each $100 of his loan, including the premium.

ARTICLE VI.—*Officers.*

SECTION 1. President.—The president shall preside at all meetings of the corporation and of the board of directors. He shall accept forthwith upon presentation all drafts drawn by agents of said corporation on the treasurer for money to be paid out for loans and taxes, provided always the loan committee has approved said loans. He shall execute promptly satisfactions of mortgages owned by said corporation, whenever they are paid and as soon as the board of directors shall have decided upon a sale of property belonging to said corporation he shall execute all necessary conveyance therefor.

SEC. 2. Vice-President.—The vice-president shall perform all the duties of the president during his absence or disability.

SEC. 3. Secretary.—The secretary shall accept forthwith upon presentation, all drafts drawn on the treasurer by the agents of the corporation for money to be paid out for loans or taxes, provided said loans have been approved by the loan committee. He shall sign in conjunction with the president all instruments which the latter is required to execute by the terms of these by-laws. He shall attend all meetings of the corporation and of the board of directors and shall keep full, accurate and complete minutes of all their meetings in books obtained for that purpose.

SEC. 4. Treasurer.—The treasurer shall have charge of the loan fund and expense fund and shall promptly deposit the same in

such bank or banks as the board of directors may designate for that purpose. He may sign checks for the disbursement of money, provided that checks on the loan fund must also be signed by the president. He shall render to the board of directors a statement of the condition of the loan and expense funds whenever requested so to do by such board.

SEC. 5. Board of directors.—The board of directors shall fill all vacancies which may occur among either the officers or directors, provided that every vacancy in said board shall be filled at its next meeting. Said board may enter into such contracts and agreements and appoint such agents for its business management as it may deem for the best interests of the affairs of the corporation.

SEC. 6. All officers shall insure to said association the faithful performance of their duties by such guarantees, sureties or bond of indemnity as the board of directors may provide and as may be required by law.

SEC. 7. The officers and directors shall make no arbitrary or unreasonable delays in performing their respective duties so as to embarrass said corporation in its practical workings and in case they or any of them do so, the board of directors may remove him or them by a majority vote after he has been heard.

SEC. 8. Advisory board.—Advisory board may be appointed by the board of directors to such an extent and at such times as it may deem best. They shall advise with the board of directors on important topics whenever called upon so to do, and shall furnish said directors with such information relating to the matters of the association in their particular localities, as they may from time to time require.

SEC. 9. The officers and directors of said association shall receive such salaries as the board of directors may deem advisable, provided the same must always be paid from the expense fund.

89 SEC. 10. All contracts made by or with this association shall be deemed to have been made at the home office in Minneapolis, Minnesota.

ARTICLE VII.—*Elections.*

SECTION 1. All elections shall be by ballot. Every member shall be entitled to one vote for each share of stock that he holds.

ARTICLE VIII.—*Meetings.*

SECTION 1. The annual meeting of the stockholders of said corporation shall be held on the last Tuesday of July in each year. The annual meeting of the board of directors shall be held immediately after the annual meeting of the stockholders in each year.

SEC. 2. The board of directors shall meet on the second Thursday of each and every month, and as much oftener as may be deemed advisable.

SEC. 3. Special meeting of the corporation or of the board of directors may be called at the written request of three directors.

SEC. 4. At least thirty days prior to any special or annual meeting of the corporation, a notice stating the time and place of such

meeting shall be deposited in the post-office at Minneapolis, Minnesota, directed to each member at his address as the same appears at the time on the books of the association, and shall be deemed a legal and sufficient notice of any annual or special meeting. Information of any other matter of which members need notice may be given in a similar manner. In case of a change of a post-office address of a member, notice thereof shall at once be given to the secretary.

SEC. 5. Members present in person or by proxy entitled to ten thousand votes shall constitute a quorum at any annual or special meeting of the association.

ARTICLE IX.—*Local Boards.*

SECTION 1. Whenever sufficient stock has been sold in any town to make it advisable, the members residing in each town may organize a local board or branch of the association. The officers of the local organization shall consist of a president, secretary, treasurer, attorney and board of five directors. These officers shall hold office one year and until their successors are elected.

SEC. 2. As it frequently happens that a meeting of the local members cannot be held as soon as is desirable, the traveling agents of the association are given authority to appoint the first officers of the local board: Provided, however, that officers so appointed shall only hold office until the members of the local board meet and elect their successors.

SEC. 3. It shall be the duty of the officers of the local board to pass on all applications for loans which are received by the association from members residing in the town where such local board is located, and to protect the interests of the association in all practicable ways.

SEC. 4. Members may, if they so desire, make monthly payments on stock to the local treasurer.

SEC. 5. As soon as the officers of the local board have been appointed or elected, and the names of such officers have been certified to the association by a traveling agent or by the local secretary, a local-board charter shall be issued to such board.

SEC. 6. The president of the local board shall call a meeting thereof whenever three members shall request him to do so.

ARTICLE X.

SECTION 1. The stock of the association shall be divided into two classes, to be known as class "A" and class "B," respectively. All stock issued previous to the 22d day of June, 1889, shall belong to class "A," and all stock issued on and after the 22d day of June, 1889, shall belong to class "B."

ARTICLE XI.

All stock belonging to class "A" shall be subject to and be governed by the rules and conditions expressed in this article, as follows:

SECTION 1. Stock may be withdrawn upon sixty days' notice, as

hereinafter provided. Members may withdraw the installments paid on unpledged shares after two years from the date of the certificate, if all dues and fines are paid to date of withdrawal, provided that when a member dies his personal representatives may withdraw such shares at any time.

SEC. 2. If a share is withdrawn at any time before it matures, the holder thereof will be entitled to receive the amount paid into the loan fund in monthly payments on such shares, together with six per cent. annual interest, less any losses to which it may be subject.

SEC. 3. Whenever in any case payments upon stock have been in arrears for six months or more, such stock shall be sold at auction for the purpose of paying the arrearages. The surplus arising from such sale, after paying the back monthly dues and fines, shall be paid to the original owner. If the stock does not bring enough to pay what is due thereon, it shall be bid in by the association and cancelled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits. Whenever any stock is to be sold for arrearages, a notice stating the time and place of such sale shall be mailed to the owner of such stock at least ten days before the date of the sale. The sale may be adjourned from time to time as may be deemed best.

SEC. 4. The payments on each share shall be sixty cents per month for each and every month until maturity, commencing one month from the date of their certificate. Payments shall be due each subsequent month on the day of the month on which the certificate is dated: Provided, however, that the board of directors may require the monthly payments on all or a portion of the stock outstanding to be paid on the same day of the month. Fifty cents per month per share shall be paid into the loan fund, and ten cents per month per share shall be devoted to operating expenses.

90

ARTICLE XII.

All stock belonging to class "B" shall be subject to and be governed by the rules and conditions contained in this article as follows:

SECTION 1. Stock may be withdrawn upon sixty days' notice as hereinafter provided. Members may withdraw the installments paid on unpledged shares one year from the date of the certificate provided that when the member dies his personal representatives may withdraw such shares at any time.

SEC. 2. If a share is withdrawn before two years from the date of the certificate the holder will be entitled to receive the amount paid into the loan fund thereon in monthly payments. If a share is withdrawn at any time after two years and before maturity the holder will be entitled to receive the amount paid into the loan fund in monthly payments thereon together with three-fourths of the profits standing to the credit of such shares.

SEC. 3. If any monthly payment on any shares becomes past due for a period of sixty days or more, such share may be declared for-

feited by the board of directors. Stock so forfeited may be sold at a monthly meeting of the board of directors, to the highest bidder. If stock which is less than one year old brings on such sale less than the amount of the arrearages and fines, then such stock shall be bid in by the association and the amount standing to the credit thereof in the loan fund shall be treated as profits and shall be credited to the other shares. If stock sold as aforesaid be one year or more old at the time of sale, it shall be bid in by the association at its withdrawal value unless a higher bid is offered. On any sale of stock the amount realized therefrom less all fines and arrearages due on the stock sold shall be paid to the member owning the same at the time of sale.

SEC. 4. Whenever any stock is transferred an admission fee of fifty cents per share shall be paid by the purchaser, provided that in no event shall such fee be less than one dollar or more than three dollars on any one certificate.

SEC. 5. The payments on each share shall be sixty cents per month for each and every month until maturity, commencing one month from the date of the certificate. Payment shall be due each subsequent month on the day of the month on which the certificate is dated. Provided, however, that the board of directors may require the monthly payments on all or a portion of the stock outstanding to be paid on the same day of the month. There may be deducted from the monthly payments for expenses such sum as may be deemed necessary by the board of directors, not exceeding, however, one dollar per year per share. The remainder of such monthly payments shall be paid into the loan fund.

ARTICLE XIII.

SECTION 1. These by-laws may be amended at any meeting of the board of directors by a three-quarters vote of a full board.

91 EXHIBIT "E."

Revised By-laws of the American Building and Loan Association of Minneapolis, Minnesota.

ARTICLE I.—*Membership.*

SECTION I. Any person may become a member of this association by making a written application for membership therein and paying the admission fee, and subscribing for one or more shares of its capital stock. Provided, that such application shall be accepted and approved by the board of directors.

SEC. II. To every person who has complied with the requisites for membership and whose application has been accepted and approved by the board of directors, shall be issued a certificate of stock, bearing the signatures of the president and secretary, or the fac-similes thereof, and the impress of the corporate seal of the association.

ARTICLE II.—*Admission Fees, Monthly Payments, Fines.*

SECTION I. The admission fee for all members subscribing for installment stock shall be one dollar per share for five or more shares; for a less number it shall be as follows:

One share	$2.00
Two shares	3.00
Three shares	4.00
Four shares	4.50

SEC. II. The admission fee on "paid-up" and "full-paid" stock shall be $2 and $4 respectively, to be deducted from the price per share at which such stock is sold.

SEC. III. Whenever any stock is transferred, the assignee shall pay an admission fee of fifty cents per share, but in no case shall such fee be less than one dollar or more than three dollars on any one certificate.

SEC. IV. The payments on each share of installment stock, of whatever class or series, shall be sixty cents per month for each and every month until maturity, commencing one month from the date of the certificate. Payments shall be due each subsequent month, on the day of the month on which the certificate is dated. Provided, however, that the board of directors may require the monthly payments on all or a portion of the stock outstanding to be paid on the same day of the month.

SEC. V. Any stockholder may make his monthly payments in advance, and when a payment for six months or more in advance is made at any one time, the shareholder shall receive such interest or discount on account thereof as the board of directors may deem advisable.

SEC. VI. If any monthly installment is not paid when due, a fine of ten cents per share shall be imposed for each and every month such payment may be in arrears.

ARTICLE III.—*Stock.*

General Provision.

SECTION I. All stock, of whatever kind, class or series shall be governed by and subject to the provisions of this article.

SEC. II. The association shall issue four kinds of stock, to be designated as "$25 paid-up," "$20 paid-up," "$100 full-paid," and "installment stock."

SEC. III. If deemed advisable by the board of directors, the association may issue, from time to time, a limited amount of guaranty or permanent stock, of which the full par value of one hundred dollars shall be paid at the time of issue, or in installments of five dollars per share from time to time, at the option of the purchaser, and upon which an annual dividend shall be paid.

SEC. IV. The installment stock shall be divided into four classes, known as class "A," class "B," class "C," and class "D," respect-

ively. All such stock issued prior to June 23d, 1889, shall belong to class "A." All such stock issued on or after June 22d, 1889, to April 26th, 1890, shall belong to class "B." All such stock issued on and after April 26th, 1890, to June 1st, 1891, shall belong to class "C." All such stock issued on and after June 1st, 1891, until a further division, shall belong to class "D."

SEC. V. Shares of stock may be arranged and issued in series, if the board of directors deem it advisable. All stock issued prior to August 1, 1890, shall belong to the first series, and that issued subsequent to such date, until a further division, shall belong to the second series.

SEC. VI. Shares in good standing, properly assigned by instrument in writing, may be transferred on payment to the association, by the purchaser, of an admission fee of fifty cents per share, but in no case shall such fee be less than one dollar or more that three dollars on any one certificate. Shares pledged to the association as collateral security, or upon which there is a lien for any debt due or owing by the shareholder, can be transferred only on payment of such debt. Stock pledged to the association as collateral security for real-estate loans, can be transferred only to the purchaser of the mortgaged property, who shall, in the deed of conveyance, assume and agree to pay the mortgage debt according to the terms and conditions thereof. No transfer shall be operative, except it be approved by the secretary and made on the books of the association.

92 SEC. VII. At any time after one year from the date of his certificate, if all dues and fines are paid, any shareholder may return his certificate and secure a reduction of the number of shares, in which event the payments already made will be applied as for payments on the lesser number of shares, and no further payments will be required thereon until the expiration of the time for which such amount will carry them. Provided, however, that no reduction of shares pledged for a loan, or upon which there is a lien, will be allowed, unless such loan be paid or lien discharged. A fee of one dollar shall be charged for such reduction.

SEC. VIII. Any debt due or owing the association from or by a shareholder shall be a lien on his shares, whether they be pledged to the association as collateral security or not, and such shares shall not be transferred, reduced or withdrawn, unless such debt be paid or lien discharged.

SEC. IX. Whenever the amount standing to the credit of a share equals one hundred dollars, such share shall be deemed to have matured, and the holder thereof shall be entitled to receive one hundred dollars therefor, together with all additional profits which may have been apportioned thereto.

SEC. X. At any time before or after the maturity of any share, the board of directors may, if it shall appear to them to be for the best interests of the corporation, retire and cancel the same at its then value, in such manner and under such regulations as may be deemed advisable.

SEC. XI. Upon the death of a shareholder, his heirs or legal rep-

resentatives, upon giving sixty days' notice, in writing, to the association, may withdraw his shares at their then withdrawal value.

SEC. XII. If the net rate of profit for the time the association has had the use of all of its funds shall not amount to the rates of interest to which the withdrawing shareholder may be entitled under the provisions of articles IV, V, VI, VII, VIII, IX, of these by-laws, when computed on the amounts paid into the loan fund on all shares in force at the time such withdrawal is made, then the shareholder shall be entitled only to the rate per cent. found to have been earned as net profits during such period.

SEC. XIII. If by reason of extraordinary losses the entire net profit is exhausted, the withdrawing shareholder shall not be entitled to interest, and if for the same reason the association is compelled to charge such losses against its capital actually paid in, all withdrawing shares shall be subject to a *pro rata* charge of such losses with those remaining undrawn, and the withdrawing member shall be entitled to only such sum as may be found to be due him after an adjustment of such losses among all the shareholders.

SEC. XIV. On receipt by the withdrawing shareholder of the amount which may be found to be due him after an adjustment of losses among all the shareholders, such shareholder shall have no further claim on the association by reason of his shares or the payment made thereon.

SEC. XV. Withdrawing shareholders shall be paid in the order in which notice of withdrawal is given, but the association shall not be required, without the consent of the board of directors, to use for that purpose in any one month more than one-half of the net receipts of the loan fund for that month. This provision shall not apply to the $100 full-paid stock.

ARTICLE IV.—*Stock*—Continued.

Class "A."

SECTION I. All stock belonging to class "A" shall be subject to and governed by the following rules and conditions in addition to the general provisions set forth in article III.

SEC. II. Ten cents per share per month shall be deducted from the monthly payments and devoted to the operating expenses of the association and the balance of such payments, or fifty cents per share per month, shall be credited to the loan fund.

SEC. III. Any shareholder whose shares have not been pledged as security for a loan and upon which there is no lien for a debt due or owing the association, and upon which at least twenty-four monthly payments have been made, may withdraw his shares at any time after twenty-four months from the date of his certificate on giving sixty days' notice of his intention to withdraw; but such notice if given prior to the expiration of the said twenty-four months, shall not take effect until the expiration of such time, and if given after, all arrearages of dues and fines must be paid to the time of giving such notice. After the expiration of the

twenty-four months, notice of withdrawal having been given, the shareholder shall cease to be a member of the association, and the relation existing between the association and such shareholder shall be construed to be that of debtor and creditor.

SEC. IV. If a share is withdrawn before maturity the holder thereof shall receive the amount paid into the loan fund in monthly payments thereon, together with six per cent. annual interest on such amount for the average time the payments have been on deposit, less any losses which may be charged thereto.

SEC. V. Whenever the monthly payments have become in arrears for six months or more, such stock shall at a monthly meeting of the board of directors, be sold at auction to the highest bidder for the purpose of paying the arrearages and fines. The surplus arising from such sale after paying arrearages and fines shall be placed to the credit of the original owner and paid to him on demand. If the stock does not bring enough to pay such arrearages and
93 fines, it shall be bid in by the association and cancelled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

A notice of such sale stating the time and place thereof shall be mailed, postage prepaid, to the owner at his last-known address at least ten days before the date of sale. The sale may be adjourned from time to time as may seem best.

ARTICLE V.—*Stock*—Continued.

Class "B."

SECTION I. All stock belonging to class "B" shall be subject to and governed by the following rules and conditions in addition to those set forth in article III.

SEC. II. One dollar per year per share shall be deducted from the monthly payments and devoted to the operating expenses of the association, and the balance, or $6.20 per share per year, shall be credited to the loan fund.

SEC. III. Any shareholder whose shares have not been pledged as security for a loan and upon which there is no lien for a debt due or owing the association, and upon which at least twelve monthly payments have been made, may withdraw his shares at any time after twelve months from the date of his certificate on giving sixty days' notice of his intention to withdraw; but such notice if given prior to the expiration of the said twelve months, shall not take effect until the expiration of such time, and if given after, all arrearages of dues and fines must be paid to the time of giving such notice. After the expiration of the twelve months, notice of withdrawal having been given, the shareholder shall cease to be a member of the association and the relation existing between the association and such shareholder shall be construed to be that of debtor or creditor.

SEC. IV. If a share is withdrawn before two years from the date of the certificate, the holder thereof shall receive the amount paid

into the loan fund in monthly payments thereon, together with one-fourth of the profits standing to the credit of such share.

SEC. V. If a share is withdrawn at any time before two years and before maturity, the holder thereof shall receive the amount paid into the loan fund in monthly payments thereon, together with three-fourths of the profits standing to the credit of such share.

SEC. VI. If any monthly payment on any share becomes past due for a period of sixty days or more, such share shall be sold at auction at a monthly meeting of the board of directors, to the highest bidder. If stock which is less than one year old brings at such sale less than the amount of the arrearages and fines, then such stock shall be bid in by the association, and the amount standing to the credit thereof in the loan fund shall be treated as profits and shall be credited to the other shares. If stock sold as aforesaid be one year or more old at the time of sale, it shall be bid in by the association at its withdrawal value unless a higher bid is offered. The amount realized from such sale of stock less all fines and arrearages due on the stock sold shall be credited to the member owning the same at the time of sale, and paid to him on demand. The sale may be adjourned from time to time, as may seem best.

ARTICLE VI.—*Stock*—Continued.

Class "C."

SECTION I. All stock belonging to class "C" shall be subject to and governed by the following rules and conditions in addition to those set forth in article III.

SEC. II. One dollar per year per share shall be deducted from the monthly payments and devoted to the operating expenses of the association, and the balance, or $6.20 per share per year, shall be credited to the loan fund.

SEC. III. Any shareholder whose shares have not been pledged as security for a loan and upon which there is no lien for a debt due or owing the association, and upon which at least twelve monthly payments have been made, may withdraw his shares at any time after twelve months from the date of his certificate on giving sixty days' notice of his intention to withdraw; but such notice, if given prior to the expiration of the said twelve months, shall not take effect until the expiration of such time, and if given after, all arrearages of dues and fines must be paid to the time of giving such notice. After the expiration of twelve months, notice of withdrawal having been given, the shareholder shall cease to be a member of the association, and the relation existing between the association and such shareholder shall be construed to be that of debtor and creditor.

SEC. IV. If a share is withdrawn before two years from the date of the certificate, the holder thereof shall receive the amount paid into the loan fund in monthly payments thereon.

SEC. V. If a share is withdrawn at any time after two years, and before maturity, the holder thereof shall receive the amount paid into the loan fund in monthly payments thereon, together with three-quarters of the profits standing to the credit of such share.

SEC. VI. If any monthly payment on any share becomes past due for a period of sixty days or more, such share shall, at a monthly meeting of the board of directors, be sold at auction to the highest bidder. If stock which is less than one year old brings on such sale less than the amount of the arrearages and fines, then such stock shall be bid in by the association, and the amount standing to the credit thereof in the loan fund shall be treated as profits and shall be credited to the other shares. If stock sold as aforesaid be one year or more old at the time of sale, it shall be bid in by the association at its withdrawal value, unless a higher bid is
94 offered. On any sale of stock, the amount realized therefrom, less all fines and arrearages due on the stock sold, shall be credited to the member owning the same at the time of sale, and paid to him on demand therefor. Such sale may be adjourned from time to time, as may seem best.

ARTICLE VII.—*Stock*—Continued.

Class "D."

SECTION I. All stock belonging to class "D" shall be subject to and governed by the following rules and conditions in addition to those set forth in article III.

SEC. II. A shareholder may at any time give notice in writing to the secretary of his intention to withdraw, and his liability to pay further installments shall cease with such notice; but such shareholders shall not be entitled to withdraw until after the expiration of twenty-four months from the date of the first monthly payment.

SEC. III. The withdrawing shareholder who has made less than twenty-four monthly payments shall receive the entire amount paid as monthly payments less fifty cents as and for a withdrawal fee and less two per cent. of the amount so paid as and for a contingent fund. If the monthly payments are in arrears when notice of withdrawal is given, a further deduction of ten cents per share as fines for delinquent payments shall be made for each month such payments are in arrears, but in no case shall the amount deducted as fines exceed sixty cents per share.

SEC. IV. The withdrawing shareholder who has made twenty-four or more payments and less than thirty-six, shall receive the entire amount paid as monthly payments, less the deductions provided by section 3 of this article and interest on such amount at the rate of five per cent. per annum for the actual time the association has had the payments in excess of twenty-four months.

SEC. V. The withdrawing shareholder who has made thirty-six or more monthly payments and less than forty-eight shall receive the entire amount paid as monthly payments less the deductions provided by section 3 of this article, and interest on the amount so paid at the rate of six per cent. per annum for the actual time the association has had the payments in excess of twenty-four months.

SEC. VI. The withdrawing shareholder who has made forty-eight or more monthly payments and less than sixty, shall receive the entire amount paid as monthly payments less the deductions as provided

by section 3 of this article, and interest on such amount at the rate of seven per cent. per annum for the actual time the association has had the payments in excess of twenty-four months.

SEC. VII. If the withdrawing shareholder has made sixty or more payments and the shares have not matured, he shall receive the entire amount paid as monthly payments less the deductions as provided by section 3 of this article, and interest on such amount at the rate of eight per cent. per annum for the actual time the association has had the payments.

SEC. VIII. If delinquent shares are not reclaimed, or an application for the withdrawal thereof made within twenty-four months from the date of the last monthly payment, the balance to the credit of such shares shall be transferred to the contingent fund and the shareholder shall have no further claim upon the association on account of such shares, or the payments thereon.

ARTICLE VIII.—*Stock*—Continued.

$50 *Paid-up and* $40 *Paid-up.*

SECTION I. This stock shall be subject to and governed by the following rules and conditions, in addition to those set forth in article III.

SEC. II. Owners of $50 paid-up stock shall be entitled to receive a semi-annual dividend of $1.50 per share, payable on the 1st day of March and the 1st day of September in each year, until such stock matures or is withdrawn. The dividends so paid shall be deducted from the profits accruing thereon, and the balance of the profits shall be placed to the credit of the stock on the books of the association.

SEC. III. The holders of $40 paid-up stock shall not be entitled to dividends, but the entire profits accruing thereon shall be credited to the stock on the books of the association.

SEC. IV. Both the $50 paid-up stock and the $40 paid-up stock may be withdrawn at any time after two years from the date of the certificate, but the shareholder shall be first required to give to the association, in writing, sixty days' notice of his intended withdrawal.

SEC. V. On withdrawal before maturity, the holder of the $50 paid-up stock shall be entitled to receive $50 per share, and the holder of the $40 paid-up stock shall receive $40 per share, and interest at the rate of six per cent. per annum.

ARTICLE IX.—*Stock*—Continued.

$25 *Paid-up and* $20 *Paid-up.*

SECTION I. This stock shall be subject to and governed by the following rules and conditions, in addition to those set forth in article III.

SEC. II. Paid-up stock may be issued and sold at the price of $25 per share, which shall include the admission fee, and no further payments shall be required thereon. The holder of this stock shall be entitled to receive a semi-annual dividend thereon of 75 cents

per share, payable on the 1st day of March and the 1st day of September in each year. Such dividends shall be deducted from the profits accruing on the stock, and the balance of the profits shall be credited to the stock on the books of the association.

95 SEC. III. Paid-up stock may be issued and sold at the price of $20 per share, which shall include the admission fee, and no further payments shall be required thereon. The holder of this stock shall be entitled to receive no dividends, but the entire profits accruing thereon shall be credited to the stock on the books of the association.

SEC. IV. Both the $25 paid-up stock and the $20 paid-up stock may be withdrawn at any time after one year from the date of the certificate, but the shareholder shall first be required to give to the association, in writing, sixty days' notice of his intended withdrawal.

SEC. V. On the withdrawal of the $25 paid-up stock at any time before two years from the date of the certificate, the holder thereof shall be entitled to receive $25 per share, less such dividends as have been paid thereon. If such stock be withdrawn at any time after two years from the date of the certificate, and before maturity, the holder thereof shall be entitled to receive $25 per share and three-fourths of the profits standing to the credit of the stock on the books of the association, less such dividends as have been paid thereon.

SEC. VI. On withdrawal of the $20 paid-up stock at any time before two years from the date of a certificate, the holder thereof shall be entitled to receive $20 per share. If such stock be withdrawn at any time after two years from the date of the certificate and before maturity, the holder thereof shall be entitled to receive $20 per share and three-fourths of the profits standing to the credit of the stock on the books of the association.

ARTICLE X.—*Stock*—Continued.

$100 *Full-paid.*

SECTION I. This stock shall be subject to and governed by the following rules and conditions in addition to those set forth in article III.

SEC. II. Full-paid stock may be issued and sold at the price of $100 per share which shall include the admission fee, and no further payments will be required thereon.

SEC. III. The $100 full-paid stock shall be divided into three classes: The first class shall be withdrawable in one year, the second class in five years, and the third class in ten years.

SEC. IV. The holder of full-paid stock of the first class shall be entitled to receive interest thereon at the rate of five per cent. per annum.

The holder of full-paid stock of the second class shall be entitled to receive interest thereon at the rate of six per cent. per annum.

The holder of full-paid stock of the third class shall be entitled to receive interest thereon at the rate of seven per cent. per annum.

The interest payments shall be made semi-annually on the 1st day of January, and the 1st day of July, in each year.

ARTICLE XI.—*Funds.*

SECTION I. The receipts of the association shall be divided into two classes, to be known as the expense fund and the loan fund.

SEC. II. The expense fund shall consist of the following items: All fees; a part of the monthly payments on installment stock not exceeding $1.20 per share per year on stock in class "A," and $1 per share per year on stock in classes "B" and "C," $1 per share per year, to be deducted from the payments on "paid-up" stock issued prior to June 1st, 1891; a portion of the profits accruing on installment stock in class "D," and on "paid-up" and "full-paid" stock issued subsequent to June 1st, 1891, not to exceed fourteen per cent. of the net receipts of payments on such stock, and all fines received for delinquent payments on installment stock in class "D."

SEC. III. The loan fund shall consist of all receipts which do not belong to the expense fund as hereinbefore provided.

SEC. IV. The loan fund can be used only for loans or investments approved by the board of directors or the loan committee, for the payment of withdrawals, for the payment of taxes and insurance, and for the protection of the interests of the association in property upon which loans have been made.

SEC. V. For all money to be disbursed by the treasurer from the loan fund a warrant or order on the treasurer shall be drawn signed by both president and secretary.

SEC. VI. During the months of January, April, July and October in each year, all undivided profits shall be apportioned to the shares in force.

SEC. VII. On withdrawal of shares in class "D" before maturity there shall be deducted from the amount paid thereon as monthly payments, two per cent. of the amount so paid, which shall be credited to the contingent fund. To this fund shall also belong all stock payments which shall be forfeited to the association as provided by section 8, article VII, of these by-laws.

SEC. VIII. The contingent fund shall be used in the payment of any losses that the association may sustain in the usual course of its business, but should the amount standing to the credit of such fund exceed that necessary to meet such contingencies, such portion thereof as may be deemed advisable by the board of directors may be loaned to the members, in which event the profits of such loans shall be credited to the shareholders.

96 ARTICLE XII.—*Loans.*

SECTION I. The funds of said association which shall belong to the loan fund shall be loaned to the member offering to pay the highest premium therefor, in addition to the stipulated six per cent. per annum, upon such terms and security as the loan committee may from time to time approve, provided that the rate of interest shall be six per cent. per annum. Payments of interest and

premium shall be made either in advance, at the time the loan is made, or monthly, as the directors may deem best.

SEC. II. Loans shall be awarded at the regular monthly meeting of the board of directors, on the second Thursday in each month, when there are sufficient funds therefor, and as much oftener as may appear to such board to be advisable.

SEC. III. A member desiring a loan shall file a written application therefor with the association, accompanied by a sealed bid, stating the amount of premium per share, in addition to six per cent. interest, which the applicant is willing to pay for such loan. But no applications shall be received until three months from the date of the applicant's certificate of stock, unless the board of directors shall, for a good reason, determine to the contrary.

SEC. IV. Bids shall be opened on the second Thursday of each month, and at such other times as the board of directors may deem advisable. Any member, or his agent or attorney, may be present when such bids are opened. All bids shall be kept on file, and after being opened shall be subject to the inspection of any person interested.

SEC. V. A member desiring a loan shall advance $10 for the purpose of securing the payment of the expense of making the loan and the examination of the title, unless that amount already stands to the credit of his stock in the loan fund. An abstract of title must be furnished in all cases by the applicant, and he must pay for the examination of the same, for the record of the mortgage and all other expenses connected with the loan.

SEC. VI. If the application, on its face, appears to the board of directors to be satisfactory, and if a bid, when opened, is found to be sufficient, appraisals of the property offered as security shall be immediately secured from at least three different and disinterested persons. The applicant shall be required to pay, as appraisal fees, the sum of $5.00 on the first $1,000, or fractional part thereof applied for, and $1 for each additional $1,000, or fractional part thereof.

SEC. VII. If the loan is granted, the expenses thereof unless otherwise provided for, may be deducted from the amount of the loan. If it is rejected because the security is not satisfactory, the expense incurred may be charged up against the stock of the applicant, and unless otherwise paid, it may be deducted from the amount standing to the credit thereof.

SEC. VIII. Loans on real estate may be repaid at any time on thirty days' notice. If a borrower neglects to pay any interest, dues or monthly payments for a period of two months from the time the same shall become due, or if he neglects to pay his insurance, taxes, or assessments on the day on which they fall due, then the whole principal sum mentioned in the mortgage, and note or bond shall at once become due and payable, without notice, and proceedings may be commenced forthwith to foreclose such mortgage, or to collect said loan or note, in such manner as the board of directors may deem best.

SEC. IX. All buildings on which loans are made shall be kept

insured by the owner at his own expense, and the insurance made payable to the association, as its interest may appear. All policies shall be renewed and turned over to the association at least forty-eight hours before expiration. But in case the owner shall fail to obtain such insurance or renewal, the association shall procure such insurance or renewal, and the expense thereof shall be charged to the owner. Provided, that the association may, if deemed advisable by the board of directors, place all insurance on property on which loans have been made, and charge the expense thereof to the owner, such expense not to exceed the rate usually charged on like risks.

SEC. X. Members obtaining loans shall execute such notes or bonds and mortgages as shall be required by the board of directors.

SEC. XI. After shares have been in force two years, the owner may obtain a loan on them without other security, but not to exceed 75 per cent. of the amount in the loan fund to the credit of such shares at the time the loan is made.

SEC. XII. A loan committee consisting of five directors, shall be appointed by the board of directors and no loan shall be granted unless the security offered therefor shall be approved by three members of said committee.

SEC. XIII. Every borrower must assign to the association as collateral security for his loan, one share of stock for each $100 of his loan including the premium.

SEC. XIV. The term "loan" as used in these by-laws and in the printed literature and blanks of the association, is employed for convenience merely, and shall not in any case be construed to define the real nature of the transaction between the association and the member who obtains an advancement on the maturity value of his stock as provided in this article; but such transaction shall be construed as a discount of or advancement on the shares owned by the member in anticipation of their maturity, there being no promise or agreement on the part of such member to repay the principal.

97 ARTICLE XIII.—*Meetings—Elections.*

SECTION I. The annual meeting of the stockholders of the association shall be held on the last Tuesday of July in each year. The annual meeting of the board of directors shall be held within ten days after the annual meeting of the stockholders in each year.

SEC. II. The board of directors shall meet on the second Thursday of each month, and as much oftener as may be deemed advisable.

SEC. III. Special meetings of the association or of the board of directors may be called upon the written request of three directors.

SEC. IV. At least thirty days prior to any special or annual meeting of the association, a notice stating the time and place of such meeting shall be deposited in the post-office at Minneapolis, Minnesota, directed to each member at his address as the same appears at the time on the books of the association, and the deposit of such notice as aforesaid, postage prepaid, shall be deemed a legal and sufficient notice of any such meeting, and there shall be attached to and accompanying such notice any proposed amendment or amendments to the articles of incorporation and a statement of any officers

to be elected at such meeting. Information of any other matter of which members need notice may be given in a like manner.

SEC. V. Any proposed amendment of which notice shall have been duly given may be adopted at such meeting by a vote of two-thirds of the stock represented and voting thereat.

SEC. VI. Members present in person or by proxy, entitled to 10,000 votes, shall constitute a quorum at any annual or special meeting of the association.

SEC. VII. Every member shall be entitled to one vote for each share of stock he holds, provided that the holders of installment stock shall have made at least one monthly payment of dues.

SEC. VIII. No member whose payments are in arrears shall be allowed to vote until such arrears are paid.

SEC. IX. No member who has borrowed money shall be allowed to vote on any question affecting the claim of the association against himself.

SEC. X. Any member may authorize another person by written proxy to vote his shares, provided that all proxies shall be filed with the president at least fifteen days before the opening of the meeting at which they are to be used. And provided further that no person shall cast more than 500 votes on proxies, and no officer, agent or employé of the association shall be allowed to hold any proxies.

SEC. XI. All elections shall be by ballot.

ARTICLE XIV.—*Officers.*

SECTION I. President.—The president shall preside at all meetings of the association and of the board of directors. He shall in conjunction with the secretary draw warrants on the treasurer for the disbursement of the funds of the association, as provided by section 5 of article XI of these by-laws, execute all contracts, notes, bonds, mortgages, leases, releases, or other instruments of writing, but no such act shall be valid unless done under the direction or by the authority of the board of directors.

SEC. II. Vice-president.—The vice-president shall perform all the duties of the president during his absence or disability.

SEC. III. Secretary.—The secretary shall attend all meetings of the association and of the board of directors, and shall keep full, accurate and complete minutes of all their meetings in the books provided for that purpose. In conjunction with the president, he shall draw warrants on the treasurer for the disbursement of the funds of the association, as provided by section 5 of article XI of these by-laws, execute all contracts, notes, bonds, mortgages, leases, releases and other instruments of writing, but no such act shall be valid unless done under the direction or by authority of the board of directors. The secretary shall have the custody of the corporate seal of the association.

SEC. IV. Treasurer.—The treasurer shall have charge of the funds of the association, and shall promptly deposit the same in such bank or banks and in such amounts as the board of directors may designate for that purpose, and shall promptly issue checks for the dis-

bursement of the money on a proper warrant therefor. He shall render to the board of directors a statement of the condition of the funds under his charge whenever requested so to do by such board.

SEC. V. Board of directors.—The board of directors shall fill all vacancies which may occur either among the officers or directors, provided that vacancies in said board shall be filled at its next regular or special meeting after such vacancy occurs. The said board may enter into such contracts and agreements and appoint such agents for its business management as may be deemed for the best interests of the association.

SEC. VI. Any officer or director who shall wilfully disregard the orders of the board of directors, or by arbitrary or unreasonable delays embarrass the association in its practical workings, may be removed by a majority vote of the board of directors.

SEC. VII. All officers shall insure to the association the faithful performance of their duties by such guarantees, sureties, or bonds of indemnity as the board of directors may provide, and as may be required by law.

ARTICLE XV.—*Local Boards.*

SECTION I. Whenever a sufficient amount of stock has been sold in any town, and if it shall be deemed to be for the best in-
98 terests of the association, the members in such towns may organize a local board. The officers of the local organization shall consist of a president, secretary, treasurer and a board of five directors, who shall hold office for one year, or until their successors are elected and qualified.

SEC. II. If a meeting of the local members cannot be secured as soon as desirable, the traveling agents of the association may appoint the first officers of the local organization, and the officers so appointed shall hold office only until the members of the local board meet and elect their successors.

SEC. III. It shall be the duty of the officers of the local board to protect the interests of the association in every practicable way.

SEC. IV. It shall be the duty of the local treasurer to receive and receipt for all payments made to him by the local members, and to promptly remit such payments to the home office.

SEC. V. The local treasurer shall be deemed the agent of the shareholders, and payment to such treasurer shall not be considered as payment to the association until such payment is received at the home office. Provided, that if the election of the local treasurer, or his appointment by the traveling agent shall have been ratified by the association, by appointment in writing under the hand of the secretary, then such treasurer shall be considered the agent of the association.

SEC. VI. As soon as the officers of the local board have been appointed or elected, and the names of such officers have been certified to the association by a traveling agent, or by the local secretary, a local-board charter shall be issued to such board.

SEC. VII. The president of the local board shall call a meeting thereof whenever three members shall request him to do so.

ARTICLE XVI.—*Miscellaneous.*

SECTION I. No contract made in behalf of the association shall be valid, except it be made with the approval of the board of directors. All written contracts shall be executed by the president and secretary, and sealed with the corporate seal of the association.

SEC. II. All contracts made by or with this association shall be deemed to have been made at the home office, in Minneapolis, Minnesota.

SEC. III. All money due from members to the association, or from it to the members, shall be payable at the home office, in Minneapolis, Minnesota.

SEC. IV. These by-laws may be amended at any meeting of the board of directors, by a three-quarter vote of a full board.

99 EXHIBIT "F."

Revised By-laws of the American Savings and Loan Association of Minneapolis, Minnesota, Adopted May 14th, 1892.

ARTICLE I.—*Membership.*

SECTION I. Any person may become a member of this association by making a written application for membership therein and paying the admission fee, and subscribing for one or more shares of its capital stock. Provided, that such application shall be accepted and approved by the board of directors.

SEC. II. To every person who has complied with the requisites for membership, and whose application has been accepted and approved by the board of directors, shall be issued a certificate of stock, bearing the signatures of the president and secretary, or the fac-similes thereof, and the impress of the corporate seal of the association.

ARTICLE II.

SECTION I. The admission fee for all members subscribing for installment stock in class "D" shall be two dollars per share, and in class "F," three dollars per share.

SEC. II. The admission fee on "paid-up" and "full-paid" stock shall be $2 and $4 respectively, to be deducted from the price per share at which such stock is sold.

SEC. III. Whenever any stock is transferred, the assignee shall pay an admission fee of fifty cents per share, but in no case shall such fee be less than one dollar or more than three dollars on any one certificate.

SEC. IV. The payments on each share of installment stock, of whatever class or series, shall be sixty cents per share for each and every month until maturity, commencing one month from the date of the certificate. Provided, however, that the monthly payments on stock in class "F" shall be one dollar per share per month. Payments shall be due each subsequent month, on the day of the month on which the certificate is dated.

SEC. V. Any stockholder may make his monthly payments in advance, and when a payment for six months or more in advance is made at any one time, the shareholder shall receive such interest or discount on account thereof as the board of directors may deem advisable.

SEC. VI. If any monthly installment is not paid when due, a fine of ten cents per share shall be imposed for each and every month such payment may be in arrears.

ARTICLE III.—*Stock.*

General Provision.

SECTION I. All stock, of whatever kind, class or series, shall be governed by and subject to the provisions of this article.

SEC. II. The association shall issue four kinds of stock, to be designated as "$25 paid-up," "$20 paid-up," "$100 full-paid," and "installment" stock.

SEC. III. If deemed advisable by the board of directors, the association may issue, from time to time, a limited amount of guaranty or permanent stock, of which the full par value of one hundred dollars shall be paid at the time of issue or in installments of five dollars per share from time to time, at the option of the purchaser, and upon which an annual dividend shall be paid.

SEC. IV. The installment stock is divided into five classes, known as class "A," class "B," class "C," class "D" and class "F" respectively. All such stock issued prior to June 22, 1889, belongs to class "A." All such stock issued on or after June 22, 1889, to April 26, 1890, belongs to class "B." All such stock issued on and after April 26, 1890, to June 1, 1891, belongs to class "C." Classes "D" and "F" comprise installment stock issued on and after June 1, 1891.

SEC. V. Shares of stock may be arranged and issued in series if the board of directors deem it advisable. All stock issued prior to August 1, 1890, shall belong to the first series, and that issued subsequent to such date, until a further division, shall belong to the second class.

SEC. VI. Shares in good standing, properly assigned by instrument in writing may be transferred on payment to the association by the purchaser of an admission fee of fifty cents per share, but in no case shall such fee be less than one dollar or more than three dollars on any one certificate. Shares pledged to the association as collateral security or upon which there is a loan for any debt due or owing by the shareholder, can be transferred only on payment of such debt. Stock pledged to the association as collateral security for real-estate loans, can be transferred only to the purchaser of the mortgaged property, who shall in the deed of conveyance assume and agree to pay the mortgage debt according to the terms and conditions thereof. No transfer shall be operative except it be approved by the secretary and made on the books of the association.

SEC. VII. At any time after one year from the date of his certifi-

cate, if all dues and fines are paid, any shareholder may return his certificate and secure a reduction of the number of shares, in which event the payments already made will be applied as for payments on the lesser number of shares, and no further payments will be required thereon until the expiration of the time for which such amount will carry them. Provided, however, that no reduction of shares pledged for a loan or upon which there is a lien, will be allowed, unless such loan be paid or lien discharged. A fee of one dollar shall be charged for such reduction.

100

SEC. VIII. Any debt due or owing the association from or by a shareholder shall be a lien on his shares, whether they be pledged to the association as collateral security or not, and such shares shall not be transferred, reduced or withdrawn unless such debt be paid or lien discharged.

SEC. IX. Whenever the amount standing to the credit of a share equals one hundred dollars, such share shall be deemed to have matured, and the holder thereof shall be entitled to receive one hundred dollars therefor, together with all additional profits which may have been apportioned thereto.

SEC. X. At any time before or after the maturity of any share, the board of directors may, if it shall appear to them to be for the best interests of the corporation, retire and cancel the same at its then value in such manner and under such regulations as may be deemed advisable.

SEC. XI. Upon the death of a shareholder, his heirs or legal representatives, upon giving sixty days' notice, in writing, to the association, may withdraw his shares at their then withdrawal value.

SEC. XII. If the net rate of profit to the time the association has had the use of all of its funds shall not amount to the rates of interest to which the withdrawing shareholder may be entitled under the provisions of articles IV, V, VI, VII, VIII, IX and XI of these by-laws, when computed on the amounts paid into the loan fund on all shares in force at the time such withdrawal is made, then the shareholder shall be entitled only to the rate per cent. found to have been earned as net profits during such period.

SEC. XIII. If by reason of extraordinary losses the entire net profit is exhausted, the withdrawing shareholder shall not be entitled to interest, and if for the same reason the association is compelled to charge such losses against its capital actually paid in, all withdrawing shares shall be subject to a *pro rata* charge of such losses with those remaining undrawn, and the withdrawing member shall be entitled to only such sum as may be found to be due him after an adjustment of such losses among all the shareholders.

SEC. XIV. On receipt by the withdrawing shareholder of the amount which may be found to be due him after an adjustment of losses among all the shareholders, such shareholder shall have no further claim on the association by reason of his shares or payments made thereon.

SEC. XV. Withdrawing shareholders shall be paid in the order in which the notice of withdrawal is given, but the association shall not

be required, without the consent of the board of directors, to use for that purpose, in any one month, more than one-half of the net receipts of the loan fund for that month. This provision shall not apply to the $100 full-paid stock.

ARTICLE IV.—*Stock*—Continued.

Class "A."

SECTION I. All stock belonging to class "A" shall be subject to and governed by the following rules and conditions, in addition to the general provisions set forth in article III.

SEC. II. Ten cents per share per month shall be deducted from the monthly payments and devoted to the operating expenses of the association, and the balance of such payments, or fifty cents per share per month, shall be credited to the loan fund.

SEC. III. Any shareholder, whose shares have not been pledged as security for a loan, and upon which there is no lien for a debt due or owing the association, and upon which at least twenty-four monthly payments have been made, may withdraw his shares at any time after twenty-four months from the date of his certificate, on giving sixty days' notice of his intention to withdraw; but such notice, if given prior to the expiration of the said twenty-four months, shall not take effect until the expiration of such time, and if given after, all arrearages of dues and fines must be paid to the time of giving such notice. After the expiration of the twenty-four months, notice of withdrawal having been given, the shareholder shall cease to be a member of the association, and the relation existing between the association and such shareholder shall be construed to be that of debtor and creditor.

SEC. IV. If a share is withdrawn before maturity, the holder thereof shall receive the amount paid into the loan fund in monthly payments thereon, together with six per cent. annual interest on such amount for the average time the payments have been on deposit, less any losses which may be charged thereto.

SEC. V. Whenever the monthly payments have become in arrears for six months or more, such stock shall, at a monthly meeting of the board of directors, be sold at auction to the highest bidder, for the purpose of paying the arrearages and fines. The surplus arising from such sale, after paying arrearages and fines, shall be placed to the credit of the original owner and paid to him on demand. If the stock does not bring enough to pay such arrearages and fines, it shall be bid in by the association and cancelled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

A notice of such sale, stating the time and the place thereof, shall be mailed, postage prepaid, to the owner at his last known address, at least ten days before the date of sale. The sale may be adjourned from time to time, as may seem best.

101 ARTICLE V.—*Stock*—Continued.

Class "B."

SECTION I. All stock belonging to class "B" shall be subject to and governed by the following rules and conditions, in addition to those set forth in article III.

SEC. II. One dollar per year per share shall be deducted from the monthly payments and devoted to the operating expenses of the association, and the balance, or $6.20 per share per year, shall be credited to the loan fund.

SEC. III. Any shareholder whose shares have not been pledged as security for a loan and upon which there is no lien for a debt due or owing the association, and upon which at least twelve months' payments have been made, may withdraw his shares at any time after twelve months from the date of his certificate on giving sixty days' notice of his intention to withdraw; but such notice if given prior to the expiration of the said twelve months, shall not take effect until the expiration of such time, and if given after, all arrearages of dues and fines must be paid to the time of giving such notice. After the expiration of the twelve months, notice of withdrawal having been given, the shareholder shall cease to be a member of the association and the relation existing between the association and such shareholder shall be construed to be that of debtor and creditor.

SEC. IV. If a share is withdrawn before two years from the date of the certificate, the holder thereof shall receive the amount paid into the loan fund in monthly payments thereon, together with one-fourth of the profits standing to the credit of such share.

SEC. V. If a share is withdrawn at any time after two years and before maturity, the holder thereof shall receive the amount paid into the loan fund in monthly payments thereon, together with three-fourths of the profits standing to the credit of such share.

SEC. VI. If any monthly payment on any share becomes past due for a period of sixty days or more, such share shall be sold at auction at a monthly meeting of the board of directors, to the highest bidder. If stock which is less than one year old brings at such sale less than the amount of the arrearages and fines, then such stock shall be bid in by the association, and the amount standing to the credit thereof in the loan fund shall be treated as profits, and shall be credited to the other shares. If stock sold as aforesaid be one year or more old at the time of the sale, it shall be bid in by the association at its withdrawal value unless a higher bid is offered. The amount realized from such sale of stock, less all fines and arrearages due on the stock sold, shall be credited to the member owning the same at the time of sale, and paid to him on demand. The sale may be adjourned from time to time, as may seem best.

ARTICLE VI.—*Stock*—Continued.

Class "C."

SECTION I. All stock belonging to class "C" shall be subject to and governed by the following rules and conditions in addition to those set forth in article III.

SEC. II. One dollar per year per share shall be deducted from the monthly payments and devoted to the operating expenses of the association, and the balance, or $6.20 per share per year, shall be credited to the loan fund.

SEC. III. Any shareholder whose shares have not been pledged as security for a loan and upon which there is no lien for a debt due or owing the association, and upon which at least twelve monthly payments have been made, may withdraw his shares at any time after twelve months from the date of his certificate on giving sixty days' notice of his intention to withdraw; but such notice, if given prior to the expiration of the said twelve months, shall not take effect until the expiration of such time, and if given after, all arrearages of dues and fines must be paid to the time of giving such notice. After the expiration of twelve months, notice of withdrawal having been given, the shareholder shall cease to be a member of the association, and the relation existing between the association and such shareholder shall be construed to be that of debtor and creditor.

SEC. IV. If a share is withdrawn before two years from the date of the certificate, the holder thereof shall receive the amount paid into the loan fund in monthly payments thereon.

SEC. V. If a share is withdrawn at any time after two years, and before maturity, the holder thereof shall receive the amount paid into the loan fund in monthly payments thereon, together with three-quarters of the profits standing to the credit of such share.

SEC. VI. If any monthly payment on any share becomes past due for a period of sixty days or more, such share shall, at a monthly meeting of the board of directors, be sold at auction to the highest bidder. If stock which is less than one year old brings on such sale less than the amount of the arrearages and fines, then such stock shall be bid in by the association, and the amount standing to the credit thereof in the loan fund shall be treated as profits and shall be credited to the other shares. If stock sold as aforesaid be one year or more old at the time of sale, it shall be bid in by the association at its withdrawal value, unless a higher bid is offered. On any sale of stock the amount realized therefrom, less all fines and arrearages due on the stock sold, shall be credited to the member owning the same at the time of sale and paid to him on demand therefor. Such sale may be adjourned from time to time, as may seem best.

101½ (Erased by mistake.)

ARTICLE VII.—*Stock*—Continued.

Class "D."

SECTION I. All stock belonging to class "D" shall be subject to and governed by the following rules and conditions in addition to those set forth in article III.

SEC. II. A shareholder may at any time give notice in writing to the secretary of his intention to withdraw, and his liability to pay further installments shall cease with such notice; but such shareholder shall not be entitled to withdraw until after the expiration of twenty-four months from the date of the first monthly payment.

SEC. III. The withdrawing shareholder who has made less than twenty-four monthly payments shall receive the entire amount paid as monthly payments less fifty cents as and for a withdrawal fee and less two per cent. of the amount so paid as and for a contingent fund. If the monthly payments are in arrears when notice of withdrawal is given, a further deduction of ten cents per share as fines for delinquent payments shall be made for each month such payments are in arrears, but in no case shall the amount deducted as fines exceed sixty cents per share.

SEC. IV. The withdrawing shareholder who has made twenty-four or more payments and less than thirty-six, shall receive the entire amount paid as monthly payments, less the deductions provided by section 3, of this article, and interest on such amount at the rate of five per cent. per annum for the actual time the association has had the payments in excess of twenty-four months.

SEC. V. The withdrawing shareholder who has made thirty-six or more monthly payments and less than forty-eight shall receive the entire amount paid as monthly payments less the deductions provided by section 3 of this article, and interest on the amount so paid at the rate of six per cent. per annum for the actual time the association has had the payments in excess of twenty-four months.

SEC. VI. The withdrawing shareholder who has made forty-eight monthly payments and less than sixty, shall receive the entire amount paid as monthly payments less the deductions as provided by section 3 of this article, and interest on such amount at the rate of seven per cent. per annum for the actual time the association has had the payments in excess of twenty-four months.

SEC. VII. If the withdrawing shareholder has made sixty or more payments and the shares have not matured he shall receive the entire amount paid as monthly payments less the deductions as provided by section 3 of this article, and interest on such amount at the rate of eight per cent. per annum for the actual time the association has had the payments.

SEC. VIII. If delinquent shares are not reclaimed or an application for the withdrawal thereof made within twenty-four months from the date of the last monthly payment, the balance to the credit of such shares shall be transferred to the contingent fund and the

shareholder shall have no further claim upon the association on account of such shares or the payments thereon.

ARTICLE VIII.—*Stock*—Continued.

$50 Paid-up and $40 Paid-up.

SECTION I. This stock shall be subject to and governed by the following rules and conditions, in addition to those set forth in article III.

SEC. II. Holders of $50 paid-up stock shall be entitled to receive a semi-annual dividend of $1.50 per share, payable on the 1st day of March and the 1st day of September in each year, until such stock matures or is withdrawn. The dividends so paid shall be deducted from the profits accruing thereon, and the balance of the profits shall be placed to the credit of the stock on the books of the association.

SEC. III. The holders of $40 paid-up stock shall not be entitled to dividends, but the entire profits accruing thereon shall be credited to the stock on the books of the association.

SEC. IV. Both the $50 paid-up and the $40 paid-up stock may be withdrawn at any time after two years from the date of the certificate, but the shareholder shall be first required to give to the association, in writing, sixty days' notice of his intended withdrawal.

SEC. V. On withdrawal before maturity, the holder of the $50 paid-up stock shall be entitled to receive $50 per share, and the holder of the $40 paid-up stock shall receive $40 per share and interest at the rate of six per cent. per annum.

ARTICLE IX.—*Stock*—Continued.

$25 Paid-up and $20 Paid-up.

SECTION I. This stock shall be subject to and governed by the following rules and conditions, in addition to those set forth in article III.

SEC. II. Paid-up stock may be issued and sold at the price of $25 per share, which shall include the admission fee, and no further payments shall be required thereon. The holder of this stock shall be entitled to receive a semi-annual dividend thereon of 75 cents per share, payable on the 1st day of March and the 1st day of September in each year. Such dividends shall be deducted from the profits accruing on the stock, and the balance of the profits shall be credited to the stock on the books of the association.

SEC. III. Paid-up stock may be issued and sold at the price of $20 per share, which shall include the admission fee, and no further payments shall be required thereon. The holder of this stock shall be entitled to receive no dividends, but the entire profits ac-
102 cruing thereon shall be credited to the stock on the books of the association.

SEC. IV. Both the $25 paid-up stock and the $20 paid-up stock may be withdrawn at any time after one year from the date of the certificate, but the shareholder shall first be required to give to the

association, in writing, sixty days' notice of his intended withdrawal.

SEC. V. On the withdrawal of the $25 paid-up stock at any time before two years from the date of the certificate, the holder thereof shall be entitled to receive $25 per share, less such dividends as have been paid thereon. If such stock be withdrawn at any time after two years from the date of the certificate, and before maturity, the holder thereof shall be entitled to receive $25 per share and three-fourths of the profits standing to the credit of the stock on the books of the association, less such dividends as have been paid thereon.

SEC. VI. On withdrawal of the $20 paid-up stock at any time before two years from the date of a certificate, the holder thereof shall be entitled to receive $20 per share. If such stock be withdrawn at any time after two years from the date of the certificate and before maturity, the holder thereof shall be entitled to receive $20 per share and three-fourths of the profits standing to the credit of the stock on the books of the association.

ARTICLE X.—*Stock*—Continued.

$100 *Full-paid.*

SECTION I. This stock shall be subject to and governed by the following rules and conditions in addition to those set forth in article III.

SEC. II. Full-paid stock may be issued and sold at the price of one hundred dollars per share which shall include the admission fee, and no further payments will be required thereon.

SEC. III. The $100 full-paid stock shall be divided into three classes: The first class shall be withdrawable in one year, the second class in five years, and the third class in ten years.

SEC. IV. The holder of full-paid stock of the first class shall be entitled to receive interest thereon at the rate of five per cent. per annum.

The holders of full-paid stock of the second class shall be entitled to receive interest thereon at the rate of six per cent. per annum.

The holder of full-paid stock of the third class shall be entitled to receive interest thereon at the rate of seven per cent. per annum.

The interest payments shall be made semi-annually on the 1st day of January, and the 1st day of July in each year.

ARTICLE XI.—*Stock*—Continued.

Class "F."

SECTION I. This stock shall be subject to and be governed by the following rules and conditions in addition to those set forth in article III.

SEC. II. There shall be issued a class of stock which shall be designated as class "F," the par value of which shall be $100 per share, and for which the subscriber shall pay an admission fee of three dollars per share, and monthly installments of one dollar per

share per month until such monthly payments and the profits accruing on such stock shall amount to $100 per share.

SEC. III. A shareholder may withdraw at any time upon giving sixty days' notice, in writing, to the secretary of his intention to withdraw and his liability to pay further installments shall cease with such notice.

SEC. IV. The withdrawing shareholder who has made less than twenty-four monthly poyments shall receive the entire amount paid as monthly payments, less fifty cents as and for a withdrawal fee and less two per cent. of the amount so paid as and for a contingent fund. If the monthly payments are in arrears when notice of withdrawal is given, a further reduction of ten cents per share as fines for delinquent payments shall be made for each month such payments are in arrears, but in no case shall the amount deducted as fines exceed sixty cents per share.

SEC. V. The withdrawing shareholder who has made twenty-four or more payments and less than thirty-six, shall receive the entire amount paid as monthly payments, less the deduction provided by section 4 of this article, and interest on such amount at the rate of five per cent. per annum for the actual time the association has had the payments in excess of twenty-four months.

SEC. VI. The withdrawing shareholder who has made thirty-six or more monthly payments and less than forty-eight shall receive the entire amount paid as monthly payments less the deductions provided by section 4 of this article, and the interest on the amount so paid at the rate of six per cent. per annum for the actual time the association has had the payments in excess of twenty-four months.

SEC. VII. The withdrawing shareholder who has made forty-eight or more monthly payments and less than sixty, shall receive the entire amount paid as monthly payments less the deductions as provided by section 4 of this article, and interest on such amount at the rate of seven per cent. per annum for the actual time the association has had the payments in excess of twenty-four months.

SEC. VIII. If the withdrawing shareholder has made sixty or more payments and the shares have not matured he shall receive the entire amount paid as monthly payments, less the deduc-
103 tion as provided by section IV of this article, and interest on such amount at the rate of eight per cent. per annum for the actual time the association has had the payments.

SEC. IX. If delinquent shares are not reclaimed, or an application for the withdrawal thereof made within twenty-four months from the date of the last monthly payment, the balance to the credit of such shares shall be transferred to the contingent fund, and the shareholder shall have no further claim upon the association on account of such shares or the payments thereon.

ARTICLE XII.—*Funds.*

SECTION I. The receipts of the association shall be divided into two classes, to be known as the expense fund and the loan fund.

SEC. II. The expense fund shall consist of the following items:

All fees; a part of the monthly payments on installment stock not exceeding $1.20 per share per year on stock in class "A," and $1 per share per year on stock in classes "B" and "C," $1 per share per year, to be deducted from the payments on "paid-up" stock issued prior to June 1st, 1891; a portion of the profits accruing on installment stock in class "D," and on "paid-up" and "full-paid" stock issued subsequent to June 1st, 1891, not to exceed fourteen per cent. of the net receipts of payment on such stock, and all fines received for delinquent payments on installment stock in class "D."

SEC. III. The loan fund shall consist of all receipts which do not belong to the expense fund as hereinbefore provided.

SEC. IV. The loan fund can be used only for loans or investments approved by the board of directors or the loan committee, for the payment of withdrawals, for the payment of taxes and insurance, and for the protection of the interests of the association in property upon which loans have been made.

SEC. V. For all moneys to be disbursed by the treasurer from the loan fund a warrant or order on the treasurer shall be drawn signed by both president and secretary.

SEC. VI. During the months of January, April, July and October in each year, all undivided profits shall be apportioned to the shares in force.

SEC. VII. On withdrawal of shares in class "D" before maturity there shall be deducted from the amount paid thereon as monthly payments, two per cent. of the amount so paid, which shall be credited to the contingent fund. To this fund shall also belong all stock payments which shall be forfeited to the association as provided by section 8, article VII, of these by-laws.

SEC. VIII. The contingent fund shall be used in the payment of any losses that the association may sustain in the usual course of its business, but should the amount standing to the credit of such fund exceed that necessary to meet such contingencies, such portion thereof as may be deemed advisable by the board of directors may be loaned to the members, in which event the profits of such loans shall be credited to the shareholders.

ARTICLE XIII.—*Loans.*

SECTION I. Borrowers shall hold one share of stock in class "F" for each $100, or fractional part thereof, borrowed, and shall make application on such blanks as shall be provided by the secretary. Applications for loans may be made at any time and for any amount, but the association shall not loan to exceed fifty per cent. of the actual cash value of the real estate offered as security, as fixed by the association's appraiser.

SEC. II. The borrower shall pay such interest and premium, in such installments, and at such times, and for such periods, and shall execute such notes, bonds and mortgages, and shall pay such fees and fines, and shall obey such rules and provisions as shall be fixed upon and provided for from time to time by the board of directors.

SEC. III. After causing proper examination and appraisal of the

property offered as security, the board of directors shall pass on the application for loan.

SEC. IV. The borrower may repay his loan at any time, upon such terms as the board of directors may provide.

SEC. V. After shares have attained a withdrawal value, and if not in arrears, the owner may obtain a loan on them without other security, not to exceed ninety per cent. of the amount paid into the loan fund on such shares.

SEC. VI. The term "loan," as used in these by-laws and in the printed literature and blanks of the association, is employed for convenience only, and shall not in any case be construed to define the real nature of the transaction between the association and the member who obtains an advancement on the maturity value of his stock, as provided in this article; but such transaction shall be construed as a discount of, or advancement on, the shares owned by the member, in anticipation of their maturity.

ARTICLE XIV.—*Meetings—Elections.*

SECTION I. The annual meeting of the stockholders of the association shall be held on the last Tuesday of July in each year. The annual meeting of the board of directors shall be held within ten days after the annual meeting of the stockholders in each year.

SEC. II. The board of directors shall meet on the second Thursday of each month, and as much oftener as may be deemed advisable.

SEC. III. Special meetings of the association or of the board of directors may be called, upon the written request of three directors.

104 SEC. IV. At least thirty days prior to any special or annual meeting of the association, a notice, stating the time and place of such meeting, shall be deposited in the post-office at Minneapolis, Minnesota, directed to each member at his address, as the same appears at the time on the books of the association, and the deposit of such notice, as aforesaid, postage prepaid, shall be deemed to be a legal and sufficient notice of any such meeting, and there shall be attached to and accompany such notice any proposed amendment or amendments to the articles of incorporation, and a statement of any officers to be elected at such meeting. Information of any other matter of which members need notice may be given in a like manner.

SEC. V. Any proposed amendment of which notice shall have been duly given, may be adopted at such meeting by a vote of two-thirds of the stock represented and voting thereat.

SEC. VI. The members present in person or by proxy, entitled to vote, shall constitute a quorum at any annual or special meeting of the association.

SEC. VII. Every member shall be entitled to one vote for each share of stock he holds, provided that the holders of installment stock shall have made at least one monthly payment of dues.

SEC. VIII. No member whose payments are in arrears shall be allowed to vote delinquent stock until such arrears are paid.

SEC. IX. No member who has borrowed money shall be allowed

to vote on any question affecting the claim of the association against himself.

SEC. X. Any member may authorize another person, by written proxy, to vote his shares, provided that all proxies shall be filed with the president at least fifteen days before the opening of the meeting at which they are to be used. And provided further, that no person shall cast more than 500 votes on proxies, and no officer, agent or employé of the association shall be allowed to hold any proxies.

SEC. XI. All elections shall be by ballot.

ARTICLE XV.—*Officers.*

SECTION I. President.—The president shall, whenever present, preside at the meetings of the association and of the board of directors. He shall have the entire control, management and supervision of the business of the association, sign warrants drawn on the treasurer for the disbursement of the funds of the association as provided by section 5 of article XII of these by-laws; negotiate, make and execute all contracts to which the association shall be a party, subject, however, to such directions and rules as shall be laid down by the board of directors.

SEC. II. Vice-president.—The vice-president shall perform the duties and exercise the powers of the president whenever there shall occur a vacancy in the office of the president, or when the president shall be absent or disabled.

SEC. III. Secretary.—The secretary shall attend all meetings of the association and of the board of directors and shall keep full, accurate and complete minutes of all their meetings in the books provided for that purpose. He shall countersign warrants on the treasurer for the disbursement of the funds of the association as provided by section 5 of article XII of these by-laws, sign all contracts, notes, bonds, mortgages, leases, releases and other instruments in writing, and shall have the custody of the corporate seal of the association.

SEC. IV. Treasurer.—The treasurer shall have charge of the funds of the association, and shall promptly deposit the same in such bank or banks and in such amounts as the board of directors may designate for that purpose, and shall promptly issue checks for the disbursement of money on a proper warrant therefor. He shall render to the board of directors a statement of the condition of the funds under his charge whenever requested so to do by such board.

SEC. V. Board of directors.—The board of directors shall fill vacancies which may occur either among the officers or directors, provided that vacancies in the said board shall be filled at its next regular or special meeting after such vacancy occurs. The said board may enter into such contracts and agreements and appoint such agents for its business management as may be deemed for the best interests of the association.

SEC. VI. Any officer or director who shall wilfully disregard the orders of the board of directors, or by arbitrary or unreasonable

delays embarrass the association in its practical workings, may be removed by a majority vote of the board of directors.

SEC. VII. All officers shall insure to the association the faithful performance of their duties by such guarantees, sureties, or bonds of indemnity as the board of directors may provide, and as may be required by law.

ARTICLE XVI.—*Miscellaneous.*

SECTION I. All written contracts shall be executed by the president and secretary as hereinbefore provided, and sealed with the corporate seal of the association.

SEC. II. All contracts made by or with this association shall be deemed to have been made at the home office, in Minneapolis, Minnesota.

SEC. III. All money due from members to the association or from it to the members shall be payable at the home office, in Minneapolis, Minnesota.

SEC. IV. These by-laws may be amended at any meeting of the board of directors by a three-quarter vote of a full board.

105 EXHIBIT "G."

STATE OF MINNESOTA, } ss :
County of Hennepin, }

Jas. H. Bishop and Thos. E. Bishop, being first duly sworn, each for himself deposes and says that he is president and secretary respectively of the American Building and Loan Association of Minneapolis, Minnesota; that the following mortgage loans deposited with the State treasurer,

984 The Goshen Pulley Company,
1013 Alonzo T. Scherer,
1023 Chas. T. Brown,
1028 Isaac N. Orchard,

are wanted for the purpose of complying with the laws of the State of Wisconsin and to replace certain mortgages repaid now on deposit with the treasurer of said State.

JAS. H. BISHOP, *Pres't.*
[CORPORATE SEAL.] THOS. E. BISHOP, *Sec'y.*

Subscribed and sworn to before me this 29th day of August, 1891.

CHAS. M. COOLEY,
Notary Public, County of Hennepin,
[NOTARIAL SEAL.] *State of Minnesota.*

Approved Sept. 2, 1891.
M. D. KENYON,
Public Examiner, Minnesota.

106 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Jas. H. Bishop and Thos. E. Bishop, being first duly sworn, each for himself deposes and says that he is president and secretary respectively of the American Building and Loan Association of Minneapolis, Minnesota; that the following bonds and mortgages deposited with the State treasurer,

L. No.	Name.	Loan.	Prem.	Face value.
952	W. E. Wright	6,500	6,500	13,000
968	Jos. Coats	3,000	3,000	6,000
974	R. W. Mars	1,500	1,500	3,000
821	J. C. Franklin	2,000	2,000	4,000
836	E. M. Watts	1,600	1,600	3,200
982	A. Potter	8,000	8,000	16,000
1024	F. L. Olmstead	1,500	1,500	3,000
1032	Belle Hinds	1,200	1,200	2,400
1034	E. C. T. Warren	2,000	2,000	4,000
		27,300	27,300	54,600

are desired for purpose of depositing same with State treasurer of Wisconsin.

JAS. H. BISHOP, *Pres't.*
[CORPORATE SEAL.] THOS. E. BISHOP, *Sec'y.*

Subscribed and sworn to before me this 16th day of February, 1892.

[NOTARIAL SEAL.] F. B. STONEMAN,
Notary Public, County of Hennepin, Minnesota.

Approved February 16, 1892.
M. D. KENYON,
Public Examiner, Minnesota.

107 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Jas. H. Bishop and Jno. G. Short, being first duly sworn, each for himself deposes and says that he is president and acting secretary respectively of the American Building and Loan Association of Minneapolis, Minnesota; that the following bonds and mortgages deposited with the State treasurer,

R. E. L. 917	C. C. Plough,	867	Julius Schultz,
919	C. S. Morris,	880	N. C. Larson,
904	G. W. Wilde,	998	M. W. Gibbs,
949	T. C. Hanson,	1034	E. C. T. Warren,

are desired for deposit with treasurer of Wisconsin.

JAS. H. BISHOP, *President.*
[CORPORATE SEAL.] JNO. G. SHORT, *Act'g Sec'y.*

Subscribed and sworn to before me this 20th day of September, 1892.

[NOTARIAL SEAL.] F. B. STONEMAN,
Notary Public, County of Hennepin, State of Minnesota.

Transfer is proper and should be made and is hereby authorized.

M. D. KENYON,
Public Examiner, Minnesota.

108 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Jas. H. Bishop and Thos. E. Bishop, being first duly sworn, each for himself deposes and says that he is president and secretary respectively of the American Building and Loan Association of Minneapolis, Minn.; that the following bonds and mtgs. — deposited with the treasurer of Minnesota.

The following list of securities now on deposit with the State treasurer of Minnesota we desire to withdraw for the purpose of immediate deposit with the State treasurer of Wisconsin in compliance with the law of that State:

Loan No.	Name.
58	H. I. Seidle & Co.
101	Madison, G. K.
312	Duncan, W. T.
328	O'Shaughnessy, Mary.
332	Jones, W. E.
337	Ames, W. O.
351	Sternberg, W. H.
384	Liebmann, M.
450	Connors, M. C.
505	Clute, A. W.
529	Coffin, Fanny L.
573	O'Brien, M. D.
619	Donahue, F.
629	Taylor, M. L.
649	Lewis, I. I.
733	McDonald, A. B.
738	Carter, J. J.
746	Henderson, S. S.
779	McCarthy, M.
1056	G. W. Ingraham.

JAS. H. BISHOP, *President.*
[CORPORATE SEAL.] THOS. E. BISHOP, *Secretary.*

Subscribed and sworn to before me this 8th day of December, 1893.

[NOTARIAL SEAL.] F. B. STONEMAN,
Notary Public, County of Hennepin, State of Minnesota.

STATE OF MINNESOTA, PUBLIC EXAMINER'S OFFICE.

Rec. Dec. 11, 1893. Order made Dec. 11, '93, and sent treasurer.

109 Copy.

DEC. 11TH, 1893.

Hon. Jos. Bobleter, State treasurer, capitol.

SIR: The American Savings and Loan Association of Minneapolis has filed with this office a statement demanding a transfer of the following securities to the State treasurer of Wisconsin in order to comply with the laws of that State. The securities desired to be transferred are as follows:

Loan No.	Name.
58	H. I. Seidle & Co.
101	Madison, G. K.
312	Duncan, W. T.
328	O'Shaughnessy, Mary.
332	Jones, W. E.
337	Ames, W. O.
351	Sternberg, W. H.
384	Leibmann, M.
450	Connors, M. C.
505	Clute, A. W.
529	Coffin, Fannie L.
573	O'Brien, M. D.
619	Donahue, F.
629	Taylor, N. L.
649	Lewis, I. I.
733	McDonald, A. B.
739	Carter, J. J.
746	Henderson, S. S.
779	McCarthy, M.
1056	G. W. Ingraham.

You are hereby authorized to make the transfer of such securities as provided by section 6, chapter 131, General Laws of 1891.

Witness my hand and official seal this 11th day of December, 1893.

[SEAL.]

M. D. KENYON,
Public Examiner.

110 EXHIBIT "H."

List of Mortgages Delivered to State Treasurer of Wisconsin Prior to July 11, 1889.

Name and address of mtgr.	Cash loaned.	When delivered to State treasurer.
J. A. Lindgren *et al.*, Gladstone, Mich..	$500.00	May 6, '89.
E. B. Stiles, Two Harbors, Mich.....	400.00	"
Michael Leary, Austin, Minn.....	200.00	"
Jas. Bee, Kansas City, Kans.....	500.00	"
J. N. Kinney, Washburn, Wis.....	1,400.00	"
Ellen M. Collins, Stevens' Point, Wis..	600.00	"
Magnes Harles, Osage, Iowa.....	500.00	"
M. E. Bassett, Woonsocket, S. D.....	650.00	"
M. S. Richardson, Paynesville, Minn..	900.00	"
J. C. Merriam, Whatcom, Wash.....	500.00	"
Harris Ouim, Elkton, S. D.....	300.00	"
Henry Weikle, Jackson, Minn.....	200.00	"
Samuel Caufman, Holton, Kans... ..	400.00	"
Eleanor Hamill, Madelia, Minn.....	500.00	"
Wm. Dwyer, Monett, Mo.....	400.00	"
Timothy Murphy, Morris, Minn... ..	384.00	"
Paul Von Lossow, Republic, Mo.....	300.00	"
Till L. Wilkins, Britton, S. D.....	750.00	"
C. M. Bunting, Chamberlain, S. D.....	300.00	"
Alfred Thompson, Elbow Lake, Minn..	500.00	"
Nels M. Olson, Gladstone, Mich.....	500.00	"
B. Vermillion, Monett, Mo	200.00	"
Ingebar Olson, Valley City, N. D.....	800.00	"
Chas. Garnier, Livingston, Mont..	800.00	"
Jno. Pickford, Ogalalla, Neb.....	600.00	"
Jennie A. Parish, Valley Springs, S. D.	500.00	June 17, '89.
A. Y. Eaton, Buffalo, Minn.....	500.00	"
A. M. Crawford, Casselton, N. D.....	900.00	"
E. T. Middleton, Huntsville, Ala.....	500.00	"
Leander Stiles, Valparaiso, Ind.....	5,000.00	"
Garti Kanstrom, Washburn, Wis.	300.00	"
Total.....	$20,784.00	

111 EXHIBIT "I."

List of Mortgages Delivered to State Treasurer of Wisconsin between July 11, 1889, and January 1, 1894.

Name and address of mtgr.	Cash loaned.	When delivered to State treasurer.
R. J. Bates, Alma Center, Wis.....	200.00	Dec. 4, '89.
J. N. Kinney, Washburn, Wis.....	1,000.00	"
Ole Flottwa, Washburn, Wis.....	200.00	"
J. A. Froseth, Washburn, Wis.....	200.00	"
Score & Holte, " "	1,000.00	"
Wm. Busch, Spooner, Wis.....	250.00	"
Nels Hoel, Washburn, Wis.....	200.00	"
C. J. & J. Zoellner, Spearfish, S. D.....	1,500.90	Feb. 10, '90.
B. L. Crossman, Snohomish, Wash. ...	1,500.00	"
C. E. Woodruff, Gibbon, Nebr.	500.00	"
W. G. Stephenson, Colfax, Iowa	400.00	"
Peter Pelkie, Ludington, Mich.....	500.00	"
F. Wiegmann, New Salem, N. D.....	500.00	"
Hans N. Lee, Altoona, Wis.....	400.00	"
T. G. Nicklin, Whatcom, Wash.	1,000.00	March 28, '90.
M. C. Long, Eufaula, Ala.....	800.00	"
T. L. Swift, Chippewa Falls, Wis.....	500.00	Sept. 15, '90.
Lucinda Wright, Colfax, Iowa	300.00	Oct. 3, '90.
C. L. Darr, Goshen, Ind.....	700.00	"
J. P. Crune, Soldier, Kans.	500.00	"
O. C. Halverson, Hector, Minn.....	400.00	Oct. 10, '90.
Jno. Kennedy, Edmonds, Wash.....	400.00	Dec. 12, '90.
M. L. Bishop, Minneapolis, Minn.....	5,000.00	Jan. 19, '91.
H. S. Markstrum, Bessemer, Mich.....	500.00	Aug. 3, '91.
M. Gorder, Frederick, S. D.	750.00	"
Sam'l H. Haynes, Wheeler, Ala.....	800.00	"
A. L. Blackmore, Sibley, Iowa..... ..	500.00	"
R. O. Bach, Ireton, Ia.....	400.00	"
112 Wm. Darnell, Alta, Iowa.....	500.00	Sept. 4, '91.
A. T. Shearer, Minneapolis, Minn.	1,500.00	"
I. N. Orchard, Fairhaven, Wash.....	1,000.00	"
J. C. Franklin, Santa Ana, Calif.....	2,000.00	Feb. 18, '92.
Elise M. Watts, Dallas, Texas.....	1,600.00	"
Jos. Coates, Danville, Va....	3,000.00	"
E. C. T. Warren, Silver City, N. M....	2,000.00	"
N. C. Larson, Bellevue, Idaho.....	10,000.00	Sept. 22, '92.
C. C. Plough, Seattle, Wash.....	2,500.00	"
C. S. Morris, Cisco, Texas.....	4,000.00	"
T. C. Hanson, Winnemucca, Nev.....	3,000.00	"
H. I. Seidel *et al.*, Eureka Springs, Ark.	1,500.00	Dec. 14, '93.
G. K. Madison, W. St. Paul, Minn.....	600.00	"
W. T. Duncan, Huntsville, Ala.....	1,250.00	"
W. E. Jones, Seattle, Wash.....	1,500.00	"

W. O. Ames, Ellensburg, Wash.....	1,000.00	"
M. C. Conners, Spearfish, S. D.....	2,000.00	"
M. D. O'Brien, Langdon, N. D.....	2,000.00	"
E. L. Barlett, trustee, Santa Fé, N. M..	4,000.00	"
Mary L. Taylor, Hot Springs, Ark....	3,000.00	"
Isaac I. Lewis, Ketchum, Idaho..... ..	5,000.00	"
A. B. McDonald, Sault Ste. Marie, Mich.	1,500.00	"
G. W. Ingraham, Jamestown, N. D....	5,500.00	"
	$80,850.00	

113 EXHIBIT "J."

List of Mortgages Delivered to State Treasurer of Wisconsin Subsequent to January 1, 1894.

Name and address of mtgr.	Cash loaned.	When delivered to State treasurer.
C. Flury, Silver City, N. M.....	500.00	Dec. 20, '94.
Frank Hewitt, Minneapolis, Minn.....	800.00	"
Geo. F. Rich, Portland, Ore.....	600.00	"
F. A. Anderson, " "	400.00	"
J. D. Cook, " "	500.00	"
Ottilie Murphy, " "	800.00	"
Moses J. Young, " "	400.00	"
E. A. Hutchins, Minneapolis, Minn....	900.00	"
Catherine Karstadt, Mankato, Minn....	3,500.00	Feb. 1, '95.
J. F. Pettengill, Staples, Minn.....	600.00	"
Emeline R. Bishop, Minneapolis, Minn.	2,500.00	"
Jennie R. Fowler, Morris, Minn.....	600.00	"
Jas. Feeley, Farmington, Minn.....	3,000.00	"
T. B. Catron, Santa Fé, N. M.....	2,000.00	"
Jno. Lopp, Monett, Mo.....	1,700.00	Oct. 7, '95.
Aune & Overby, Washburn, Wis.....	2,000.00	Nov. 21, '95.
M. J. Schubert, Pierre, S. D.....	8,000.00	"
Jno. S. Wise, Minneapolis, Minn.....	1,700.00	"
Otto F. Schoenfeldt, Great Falls, Mont.	2,100.00	"
Mary H. Kerr, Portland, Ore.....	1,500.00	"
Josiah H. Glass, " "	700.00	"
Wm. J. Wilson, Great Falls, Mont..	500.00	"
Alfred Johnson, " " ..	400.00	"
Martha F. Houston, " " ..	1,000.00	"
Frank E. Steffy, " " ..	1,700.00	"
Geo. P. Wallihan, Portland, Ore.....	500.00	"
Caroline E. Miller, " "	1,500.00	"
Sarah W. Fisher, " "	1,500.00	"
A. G. Brockwell, " "	900.00	"
J. B. Mahana, " "	800.00	"
Total.....	$43,600.00	

114 EXHIBIT "K."

Know all men by these presents that —, —— ——, of the county of —— and State of ——, — held and firmly bound unto the American Building and Loan Association, of the city of Minneapolis and State of Minnesota, in the sum of $—, lawful money of the United States of America, to be paid to the said association, its certain attorneys, successors, or assigns, at its home office in Minneapolis, Minnesota; to which payment well and truly to be made — bind — heirs, executors, administrators, jointly and severally, firmly by these presents.

Sealed with — seals and dated at Minneapolis, Minn., this — day of ——, one thousand eight hundred and eighty —.

The condition of this obligation is such that whereas said —— —— has paid, in accordance with the by-laws of said association, the sum of $— as and for a premium for the advancement to him by said association of $—, by way of anticipation of the value, at their maturity, of — shares of the capital stock of said association, now owned by said —— ——; and whereas said association has this day advanced to said —— —— the sum of $— in consideration of said premium and by way of said anticipation:

Now, therefore, if the above-bounden —— ——, — heirs, executors, and administrators, or any of them, shall well and truly pay or cause to be paid unto the said association, its certain attorney, successors, or assigns, at its said home office, on or before nine years from date hereof, the just sum of $— as aforesaid, together with interest on $—, at the rate of six per cent. per annum, from the — of ——, A. D. 1888, until paid in money, payable monthly, or shall well and truly pay, or cause to be paid, unto said association, its certain attorney, successors, or assigns, at its said home office, the sum of $— on the — day of each and every month hereafter, as and for the monthly dues on said blank shares of the capital
115 stock of said association now owned by the said —— ——, and by him hereby sold, assigned, transferred, and set over to said association as security for the faithful performance of this bond, and shall also well and truly pay, or cause to be paid, all installments of interest aforesaid, and all fines which become due on the said stock, without any fraud or further delay, until said stock becomes fully paid in and of the value of $100 per share, and shall then surrender said stock to said association, then, and in either of such cases, the above obligation to be void otherwise of full force and virtue.

Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of said interest or the said monthly dues on said stock for the space of six months after the same, or any part thereof, shall have become due, or if the taxes and assessments on the property mortgaged to secure the faithful performance of this bond be not paid when due, or if the insurance policy or policies on the said mortgaged property be allowed to expire without renewal, then, and in either or any such

case-, the whole principal sum aforesaid shall, at the election of said association, its successors or assigns, immediately thereupon become due and payable, and the sum of $—, less whatever sum has been paid said association, as and for the monthly dues on said — shares of said capital stock, at the time of said default, may be enforced and recovered at once as liquidated damages, together with and in addition to all interest and fines then due, and all costs and disbursements, including said taxes, insurance, and assessments, which have been paid by said association, anything hereinbefore contained to the contrary notwithstanding.

116 EXHIBIT "L."

This indenture, made this — day of —— in the year of our Lord one thousand eight hundred and —, between —— —— of the — of —— in the county of —— and State of ——, party of the first part, and the American Building and Loan Association, of the city of Minneapolis, in the county of Hennepin and State of Minnesota, party of the second part,

Witnesseth: that the said party of the first part for and in consideration of the sum of $— to — in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these presents do- grant, bargain, sell, convey and confirm, unto the said party of the second part, its successors and assigns, forever, all that tract, —— piece or parcel of land lying and being in the county of —— and State of —— described as follows, to wit:

... ...

To have and to hold the same, together with all the hereditaments and appurtenances thereunto in anywise appertaining, unto the said party of the second part, its successors and assigns forever. And the party of the first part do- covenant with the party of the second part, its successors and assigns, as follows: That — lawfully seized of said premises in fee-simple; that — ha- good right to grant and convey the same as above conveyed; that said premises are free from all liens and incumbrances; that the said party of the second part, its successors and assigns, shall quietly enjoy and possess the same and that the said party of the first part will warrant and defend the title to the same against all lawful claims.

And the said party of the first part do- still further covenant and agree with said party of the second part, its successors and assigns: that at all times during the continuance of this mortgage, and until the same shall be fully paid or released — will keep
117 the buildings on the said premises unceasingly insured in some first-class, responsible insurance company, satisfactory to the mortgagee for at least the sum of — dollars, payable in case of loss to said party of the second part to the amount then secured by this mortgage, and that —— —— will during all of said time pay all taxes and assessments that may for any and all purposes be assessed or imposed on said premises, or any part thereof, and will pay them previous to the time when any part of said premises could

be sold for any such taxes or assessments. And in case said party of the first part shall neglect or refuse to keep said buildings continually insured, or such taxes and assessments paid, as herein provided, then and in either of such cases the said party of the first part hereby authorizes and empowers —— ——, the said party of the second part, its successors and assigns, to effect such insurance and pay such taxes or assessments, and to charge all such sum or sums paid for either and all such purposes, to the said party of the first part, and to tack and impress the same as an additional lien on said premises, to remain secured by, and as a part of this mortgage, and to bear interest at the same rate as the indebtedness secured hereby, and to foreclose for the same, at the same time and in the same manner as for the original indebtedness hereby secured.

This mortgage being given to secure an advancement made on — shares of stock in said American Building and Loan Association, the monthly payments on which amount to $— per month, said party of the first part does further covenant and agree to make the said monthly payments on said stock as they shall become due until said stock becomes fully paid in.

Provided, nevertheless, that if said party of the first part, — heirs, executors, administrators or assigns, shall well and truly pay or cause to be paid to the said party of the second part, its successors or assigns, at its home office, in Minneapolis, Minnesota, the sum of $— and interest according to the conditions
118 of — certain bond made and executed by —— —— said party of the first part to said party of the second part, bearing even date herewith, payable on or before nine years from date, —— with interest on — dollars at the rate of six per cent. per annum until paid, interest payable monthly, or shall pay or cause to be paid, at the home office of said association, all installments of interest which become due on said bond, and all fines and monthly payments which become due on said stock until said stock becomes fully paid in and of the value of $100 per share, and before any of said installments of interest or monthly payments shall have been past due for a period of six months, and shall then surrender said stock to said association in payment of said bond, then this deed shall be null and void, otherwise to remain in full force and effect. But if default be made in the payment of the said sum or sums of money, or of any installment of interest thereon, or of any monthly payment on said stock for a period of six months after the same shall be due, or any part of either, or in effecting the insurance, or in paying the taxes at the time or times hereinbefore specified for the payment thereof, or in any condition in this mortgage contained, then and in either or any such case the whole principal sum or sums secured by this mortgage and the interest thereon accrued up to the time of such default, shall at the election of said second party, its successors or assigns, of its or their agent, become thereupon due and payable immediately upon said default, and the said party of the first part does hereby authorize and empower the said party of the second part, its successors or assigns, the owner hereof, its agent and attorney, at its or their election and without notice of such election

to foreclose at once this mortgage for such sum or sums and interest and money paid as may be due and payable by the terms of said bond hereby secured; and to sell the same hereby granted premises at public auction, and convey the same to the purchaser in fee-
119 simple agreeably to the statutes in such case made and provided, and out of the moneys arising from such sale to retain the principal and interest then accrued on the sum so elected to be foreclosed for, together with any insurance, taxes or assessments, paid as above stipulated and all costs and charges of such foreclosure, including $— attorneys' fees for foreclosing this mortgage, and pay the surplus, if any, to the said party of the first part, — heirs, executors, administrators and assigns.

This mortgage is understood to be made with reference to and under the laws of the State of Minnesota.

In testimony whereof, said party of the first part hereunto set — hand and seal the day and year first above written.

120 EXHIBIT "M."

Stock Loans Made to Wisconsin Shareholders.

Name and address.	Amount loaned.
W. T. Rynder, Florence, Wis.	100.00
Adolph Olson, W. Superior, Wis.	30.00
H. F. Schroeder, Baraboo, Wis.	410.00
G. A. " " "	200.00
H. P. Jones, " "	700.00
D. W. John, Marinette, Wis.	519.00
G. M. Breakey, Alma Center, Wis.	387.00
Helena Dahl Johnson, Stoughton, Wis.	360.00
Chas. Anderson, Oshkosh, Wis.	355.00
Sam. Schule & Son, Monroe, Wis.	369.00
Gertrude Weber, S. Superior, Wis.	750.00
A. S. Hearn, Dodgeville, Wis.	306.00
F. J. Runge, Merrill, Wis.	350.00
Jno. P. Juenger, Ft. Howard, Wis.	484.00
F. Jackel, Spooner, Wis.	189.90
D. Justice, Greenwood, Wis.	125.00
J. H. Soper, Clinton, Wis	30.00
A. Kellett, W. Superior, Wis.	175.00
E. B. Strothman "	292.00
Albert Hauer, Tomahawk, Wis.	98.00
Peter Eimon, W. Superior, Wis.	150.00
Otto C. Buerki, Pt. Washington, Wis.	100.00
Jno. L. Post, Madison, Wis.	132.00
Henry D. Squiers, Sheboygan, Wis.	513.00
Gustave Hanson, Osseo, Wis.	74.00
	$7,198.90

121 EXHIBIT "N."

List of Real-estate Mortgages Given by Wisconsin Shareholders.

Name and address of mortgagor.	Amount loaned.
J. N. Kinney, Washburn, Wis.	1,400.00
Aune & Overby, " "	2,000.00
J. N. Kinney, " "	1,000.00
Garti Kanstrum, " "	300.00
Ole Flottum, " "	200.00
J. A. Froseth, " "	200.00
Score & Holte, " "	1,000.00
Nels Hoel, " "	200.00
Benj. Mash, Alma, Wis.	800.00
Thirza L. Swift, Chippewa Falls, Wis.	500.00
Jno. Amundson, W. Superior, Wis.	400.00
Hans N. Lee, Altoona, Wis.	400.00
R. J. Bates, Alma Center, Wis.	200.00
Benson & Anderson, Amery, Wis.	400.00
Ellen M. Collins, Stevens Point, Wis.	600.00
Wm. Busch, Washburn, Wis.	250.00
Total.	$9,850.00

122 EXHIBIT "O."

The American Building and Loan Association, Minneapolis, Minn.

[Vignette.]

Certificate No. —. No. of shares, —. Amount, $—.

This certifies that —— ——, of ——, county of ——, State of ——, is a member of the American Building and Loan Association of Minneapolis, Minnesota, and has subscribed for and is the owner and holder of — shares of stock therein.

This certificate is issued to and is accepted by the holder thereof upon the following express terms and conditions:

First. The shareholder agrees to pay to this association 60 cts. monthly for each share until such share matures or is withdrawn.

Second. Monthly payments must be made each month on or before the day of the month on which this certificate is dated. No notices of such monthly payments shall be sent to members. All moneys due from members to the association or due from the association to members shall be due and payable at the home office in Minneapolis, Minnesota. Provided, however, that the members in any town may elect a local treasurer and may make payments to him for transmission to the home office; in such case the local treasurer will be deemed to be the agent of the members and not of the association.

Third. Fifty cents of each monthly payment on each share and

all fines shall go into the loan fund; the remainder of such payment and all fees shall go into the general or expense fund. No part of the loan fund or interest or profits thereon can be used for expenses of any kind except for taxes thereon.

Fourth. If any monthly payments are not paid when due a fine of ten cents per share shall be imposed for each month payments may be in arrears.

Fifth. Stock in this association is non-forfeitable; but if a monthly payment on any share becomes past due for a period of six months or more, such share shall be sold at auction for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines; the balance remaining after paying all accrued fines and monthly payments shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments it shall be bid in by the association and cancelled, and all money standing to the credit thereof in the loan fund shall be considered profit to the other shareholders.

Sixth. Shares in good standing may be transferred on payment to the association of a transfer fee of fifty cents per share; but in no case shall such fee be less than one dollar or more than three dollars on any certificate. Shares on which loans have been made can be transferred only to a purchaser of the mortgaged property. No transfer is good unless made on the books of the association.

Seventh. At any time after one year from date, this certificate may be returned and a new certificate for a less number of shares issued. In such case the money paid hereon (excepting the first payment) shall be applied on the new certificate and no more payments shall be required until such money is exhausted. A fee of one dollar shall be charged for issuing the new certificate.

Eighth. If a member dies his personal representatives may withdraw his shares at any time. In no other case can a share be withdrawn until after two years from the date of the certificate. If a share is withdrawn at any time before it matures the member will be entitled to receive a sum of money equal to the amount paid into the loan fund on such share in monthly payments, together with six per cent. annual interest. If a share has matured it may be withdrawn at any time, and the holder thereof will be entitled to receive $100, together with all additional profits which may have been apportioned to such share. A member desiring to withdraw his shares shall be required to give the association sixty days' notice of such intended withdrawal. A fee of fifty cents per share may be charged whenever any shares are withdrawn; but in no case shall such fee be less than one dollar or more than three dollars on any certificate. Shareholders who have borrowed money cannot withdraw their shares unless the loan is repaid. Unless the consent of the directors is obtained, the association cannot be required to use in the payment of withdrawing members in any month more than half as much money as is received for monthly payments during that month.

Ninth. Once in three months the profits arising from interest,

premiums, fines, and other sources shall be apportioned among the shares in good standing. Whenever the monthly payments made on any share, together with the profits apportioned to such share amount to $100, such share shall be deemed to have matured and no more monthly payments shall be required. The directors may require any share to be withdrawn at any time after it has matured. If losses occur they shall be deducted from undivided profits so far as possible; any deficiency may be charged up to the shares in force.

Tenth. No agent has authority to change this contract in any way; and the association assumes no obligation for any statements not contained in its printed literature.

Given under the seal of the American Building and Loan Association at Minneapolis, Minnesota, this — day of ——, 18—.

—— ——, *President.*

—— ——, *Secretary.*

[Certificate printed in black ink, surrounded by border printed in brown ink.]

123 EXHIBIT "O 1."

American Building and Loan Association, Minneapolis, Minn.

[Vignette.]

Certificate No. —. No. of shares, —. Amount, $—.

This certifies that —— ——, of ——, county of ——, State of ——, is a member of the American Building and Loan Association of Minneapolis, Minnesota, and has subscribed for and is the owner and holder of — shares of stock therein.

This certificate is issued to and is accepted by the holder thereof upon the following express terms and conditions:

First. The shareholder agrees to pay to this association sixty cents monthly for each share until such share matures or is withdrawn.

Second. Monthly payments must be made each month on or before the day of the month on which this certificate is dated. No notices of such monthly payments shall be sent to members. All moneys due from members to the association or due from the association to members shall be due and payable at the home office in Minneapolis, Minnesota. Any money that may be due the association from a member shall be a lien on the stock of such member and no person shall be entitled to have said stock transferred on the books of the association until such money is paid.

Third. There may be deducted from the monthly payments such sum as may be needed for expenses not exceeding one dollar per year per share. The remainder of such payments and all fines shall be paid into the loan fund. No part of the loan fund or interest or profits thereon can be used for expenses of any kind except for taxes.

Fourth. If any monthly payments are not paid when due a fine

of ten cents per share may be imposed for each month payments may be in arrears.

Fifth. Stock in this association is non-forfeitable; but if a monthly payment on any share becomes past due for a period of sixty days or more, such share may be sold at auction for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines and other money due the association; the balance remaining after paying all accrued fines and monthly payments and other money as aforesaid shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments it shall be bid in by the association and cancelled, and all money standing to the credit thereof in the loan fund shall be considered profit to the other shareholders. Provided, however, that no stock which is one year or more old shall be sold for less than its withdrawal value.

Sixth. Shares in good standing may be transferred on payment to the association by the purchaser of an admission fee of fifty cents per share; but in no case shall such fee be less than one dollar or more than three dollars on any certificate. Shares on which loans have been made can be transferred only to a purchaser of the mortgaged property. No transfer is good unless made on the books of the association.

Seventh. At any time after one year from date, if all dues and fines are paid, this certificate may be returned and be reduced to a less number of shares. In carrying the lesser number of shares to which certificate is reduced, no more payments shall be required until such money is exhausted. A fee of one dollar shall be charged for reducing the certificate.

Eighth. If a member dies his personal representatives may withdraw his shares at any time. In no other case can a share be withdrawn until after one year from the date of the certificate. If a share is withdrawn at any time before two years from the date of the certificate the holder thereof will be entitled to receive the amount paid into the load fund in monthly payments on such share. If the stock is two or more years old when withdrawn the holder will be entitled to receive the amount paid into the loan fund in monthly payments on such stock together with three-quarters of the profits apportioned to said stock. If a share has matured it may be withdrawn at any time, and the holder thereof will be entitled to receive $100 together with all additional profits which may have been apportioned to such share. A member desiring to withdraw his shares shall be required to give the association sixty days' notice of such intended withdrawal. Shareholders who have borrowed money cannot withdraw their shares unless the loan is repaid. Unless the consent of the directors is obtained, the association cannot be required to use in the payment of withdrawing members in any month more than half as much money as is received for monthly payments during that month.

Ninth. Once in three months the profits arising from interest, premiums, fines, and other sources shall be apportioned among the

shares in good standing. Whenever the amount standing in the loan fund to the credit of any share equals $100, such share shall be deemed to have matured and no more monthly payments shall be required. The directors may require a share to be withdrawn at any time before or after it has matured. If losses occur they shall be deducted from undivided profits so far as possible; any deficiency may be charged up to the shares in force.

Tenth. No agent has authority to change this contract in any way; and the association assumes no obligation for any statements not contained in its printed literature.

Given under the seal of the American Building and Loan Association at Minneapolis, Minnesota, this — day of ——, 18—.

JAS. H. BISHOP, *President.*
T. E. BISHOP, *Secretary.*

—— ——, *Recorder.*

[Certificate printed in black ink, surrounded by border printed in brown ink.]

124 EXHIBIT "O 2."

The American Building and Loan Association, Minneapolis, Minn.

[Vignette.]

Certificate No. —. No. of shares, —. Amount, $—.

This certifies that —— ——, of ——, county of ——, State of ——, is a member of the American Building and Loan Association of Minneapolis, Minnesota, and has subscribed for and is the owner and holder of — shares of stock therein.

This certificate is issued to and is accepted by the holder thereof upon the following express terms and conditions:

First. The shareholder agrees to pay to this association sixty cents monthly for each share until such share matures or is withdrawn.

Second. Monthly payments must be made each month on or before the day of the month on which this certificate is dated. No notices of such monthly payments shall be sent to members. All moneys due from members to the association or due from the association to members shall be due and payable at the home office in Minneapolis, Minnesota. Any money that may be due the association from a member shall be a lien on the stock of such member, and no person shall be entitled to have such stock transferred on the books of the association until such money is paid.

Third. There may be deducted from the monthly payments such sum as may be needed for expenses not exceeding one dollar per year per share. The remainder of such payments and all fines shall be paid into the loan fund. No part of the loan fund or interest or profits thereon can be used for expenses of any kind except for taxes.

Fourth. If any monthly payments are not paid when due a fine

of ten cents per share may be imposed for each month payments may be in arrears.

Fifth. Stock in this association is non-forfeitable; but if a monthly payment on any share becomes past due for a period of sixty days or more, such share may be sold at auction for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines and other money due the association; the balance remaining after paying all accrued fines and monthly payments and other money as aforesaid shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments it shall be bid in by the association and cancelled, and all money standing to the credit thereof in the loan fund shall be considered profit to the other shareholders. Provided, however, that no stock which is one year or more old shall be sold for less than its withdrawal value.

Sixth. Shares in good standing may be transferred on payment to the association by the purchaser of an admission fee of fifty cents per share; but in no case shall such fee be less than one dollar or more than three dollars on any certificate. Shares on which loans have been made can be transferred only to a purchaser of the mortgaged property. No transfer is good unless made on the books of the association.

Seventh. At any time after one year from date, if all dues and fines are paid, this certificate may be returned and a new certificate for a less number of shares issued. In such case the money paid hereon shall be applied on the new certificate and no more payments shall be required until such money is exhausted. A fee of one dollar shall be charged for issuing the new certificate.

Eight. If a member dies his personal representatives may withdraw his shares at any time. In no other case can a share be withdrawn until after one year from the date of the certificate. If a share is withdrawn at any time before two years from the date of the certificate the holder thereof will be entitled to receive the amount paid into the loan fund in monthly payments on such share together with one-fourth of the profits apportioned to such share. If the stock is two or more years old when withdrawn the holder will be entitled to receive the amount paid into the loan fund in monthly payments on such stock together with three-quarters of the profits apportioned to said stock. If a share has matured it may be withdrawn at any time, and the holder thereof will be entitled to receive $100 together with all additional profits which may have been apportioned to such share. A member desiring to withdraw his shares shall be required to give the association sixty days' notice of such intended withdrawal. Shareholders who have borrowed money cannot withdraw their shares unless the loan is repaid. Unless the consent of the directors is obtained, the association cannot be required to use in the payment of withdrawing members in any month more than half as much money as is received for monthly payments during that month.

Ninth. Once in three months the profits arising from interest,

premiums, fines, and other sources shall be apportioned among the shares in good standing. Whenever the amount standing in the loan fund to the credit of any share equals $100, such share shall be deemed to have matured and no more monthly payments shall be required. The directors may require a share to be withdrawn at any time before or after it has matured. If losses occur they shall be deducted from undivided profits so far as possible: any deficiency may be charged up to the shares in force.

Tenth. No agent has authority to change this contract in any way; and the association assumes no obligation for any statements not contained in its printed literature.

Given under the seal of the American Building and Loan Association at Minneapolis, Minnesota, this — day of ——, 188-.

JAS. H. BISHOP, *President.*
T. E. BISHOP, *Secretary.*

—— ——, *Recorder.*

[Certificate printed in black ink, surrounded by border printed in brown ink.]

125 EXHIBIT "O 3."

Class D. Series Two.

American Building and Loan Association, Minneapolis, Minn.

[Vignette.]

Certificate No. —. No. of shares, —. Amount, $—.

This certifies that —— ——, of ——, county of ——, State of ——, is a member of the American Building and Loan Association of Minneapolis, Minnesota, and has subscribed for and is the owner and holder of — shares of stock therein.

This certificate is issued to and is accepted by the holder hereof upon the following express terms and conditions:

First. Monthly payments.—The shareholder agrees to pay to the association sixty cents monthly for each and every share until such share matures or is withdrawn.

Second. Same.—Such payments must be made monthly without notice on or before the day of the month on which this certificate is dated. Any money due from the shareholder to the association as monthly payments or otherwise, or from the association to the shareholder, shall be payable at the home office in Minneapolis, Minnesota.

Third. Lien.—Any debt due or owing the association from or by a shareholder shall be a lien on his shares whether they be assigned to the association as collateral security or not.

Fourth. Fines.—If any monthly payments are not made when due a fine of ten cents per share may be imposed for each month such payments may be in arrears.

Fifth. Transfers.—Shares in good standing, properly assigned by instrument in writing, may be transferred on payment to the asso-

ciation by the purchaser of an admission fee of fifty cents per share, but in no case shall such fee be less than one dollar or more than three dollars on any one certificate. Shares pledged to the association as security for stock loans or upon which there is a lien for a debt due or owing the association can be transferred only on payment of such loan or debt. Shares pledged to the association as collateral security for real-estate loans can be transferred only to the purchaser of the mortgaged property who shall, in the deed of conveyance, assume and agree to pay the mortgage debt according to the terms and conditions of the mortgage. No transfer shall be effective except it be approved by the secretary and made on the books of the association.

Sixth. Reductions.—At any time after one year from the date hereof, if all dues and fines are paid, this certificate may be returned and the number of shares reduced. In such case the whole amount paid as monthly dues will be credited as for payments on the lesser number of shares and no further payments will be required until the expiration of the time for which such amount will carry the shares: Provided, however, that no reduction of shares pledged for a loan or upon which there is a lien will be allowed unless such loan be paid or lien discharged. A fee of one dollar shall be charged for such reduction.

Seventh. Withdrawals.—A shareholder whose shares are not pledged for a loan, may at any time, give notice in writing to the secretary of his intention to withdraw, and his liability to pay further installments shall cease with such notice; but such shareholder shall not be entitled to withdraw until the expiration of twenty-four months from and after the date of the first monthly payment. The withdrawing member who has made less than twenty-four monthly payments shall be entitled to receive the entire amount paid (not including admission fees or fines) less fifty cents as and for a withdrawal fee, and two per cent. of the amount so paid as and for a contingent fund. If the monthly payments are in arrears when notice of withdrawal is given, a further deduction of ten cents per share as fines for the delinquent payments shall be made for each month such payments are in arrears, but in no case shall the amount deducted for fines exceed sixty cents per share. The withdrawing shareholder who has made 24 or more payments and less than 36, 36 or more payments and less than 48, 48 or more payments and less than 60, shall receive the amount paid as monthly payments less the deductions as above provided and interest on such amount at the rate of five, six and seven per cent. per annum respectively, for the actual time the association has had such payments in excess of 24 months. If the withdrawing shareholder has made 60 or more payments and the shares have not matured, he shall receive the amount paid as monthly payments less the deductions as above provided and interest on such amount at the rate of eight per cent. per annum for the actual time the association has had the payments: Provided, however, that the withdrawing shareholder shall not receive a rate of interest greater than the net rate of profit actually earned by the association on all shares in force during said period,

and if by reason of extraordinary losses the entire profits have been exhausted and the capital impaired, all withdrawing shares shall be subject to a *pro rata* charge of such losses with those remaining undrawn, and the withdrawing member shall be entitled to receive only such sum as may be found to be due him after an adjustment of such losses among all shareholders. And provided further, that no more than one-half of the amount received in monthly payments in any one month shall be used to pay withdrawals without the consent of the board of directors. No notice of withdrawal shall be effective to relieve a shareholder of his liability for future payments while there is a lien upon his shares for any debt due or owing the association, and such shares cannot be withdrawn until such debt is paid. Upon the death of a shareholder his heirs or legal representatives shall, upon giving sixty days' notice to the association in writing receive the then withdrawal value of his shares. The directors may require a share to be withdrawn at any time before or after it has matured.

Eighth. Forfeitures.—If delinquent shares are not reclaimed or an application for the withdrawal thereof made within 24 months from the date of the last payment the balance to the credit of such shares shall be transferred to the contingent fund and the shareholder shall have no further claim upon the association on account of such shares or the payments made thereon.

Ninth. Maturity.—Once in three months the profits earned by the association shall be computed and whenever the sum of $100 shall appear to the credit of a share, such share shall be deemed to have matured and no further payments shall be required.

Tenth. Authority of agents.—No agent has authority to change the terms of this contract. The association assumes no obligation for any statements not contained in its printed literature.

Given under the seal of the American Building and Loan Association, at Minneapolis, Minnesota, this — day of ——, 189–.

JAS. H. BISHOP, *President.*
T. E. BISHOP, *Secretary.*

—— ——, *Recorder.*

Terms and conditions of the foregoing certificate approved this 4th day of June, A. D. 1891.

M. D. KENYON,
Public Examiner, Minnesota.

[Certificate printed in black ink, surrounded by border printed in brown ink.]

126 EXHIBIT "O 4."

American Building and Loan Association, Minneapolis, Minn.

[Vignette.]

This certifies that —— ——, of ——, county of ——, State of ——, is a member of the American Building and Loan Association of Minneapolis, Minnesota, and has subscribed for and is the owner

and holder of — shares of stock therein. Given under the seal of the American Building and Loan Association, at Minneapolis, Minnesota, this — day of ——, 18—.

—— ——, *Secretary.* —— ——, *President.*

Amount, $—. —— ——, *Recorder.*

This certificate is issued to and is accepted by the holder thereof upon the following express terms and conditions:

First. It is understood that $20 per share has been paid to the association for this stock and that the holder hereof can never be assessed or required to make any further payment hereon for any cause whatever.

Second. Of the money received by the association on this stock there may be placed in the expense fund for each share, $3 for the first year and $1 for each year thereafter while the stock is in force. The balance must be placed in the loan fund to the credit of this stock. Amount deducted for first year includes admission fee of $2.00.

Third. Whenever the amount standing to the credit of this certificate equals $100 per share, the stock shall be deemed to have matured and the holder thereof shall be entitled to withdraw the same and to receive $100 per share therefor.

Fourth. This stock cannot be withdrawn until one year from the date of the certificate. Whenever the holder thereof desires to withdraw this stock he shall give to the association sixty days' notice of such intended withdrawal.

Fifth. Unless the consent of the board of directors is obtained the association cannot be required to use in the payment of withdrawing members in any month more than half as much money as is received from monthly payments during that month.

Sixth. Shares in good standing may be transferred on payment to the association of a transfer fee of fifty cents per share; but in no case shall such fee be less than $1 or more than $3 on any certificate. Shares on which loans have been made can be transferred only to a purchaser of the mortgaged property. No transfer is good unless made on the books of the association.

Seventh. The board of directors may require any share to be withdrawn at any time after it has matured. If losses occur they shall be deducted from undivided profits as far as possible; any deficiency may be charged up to the shares in force and deducted from the accrued profits thereon.

Eighth. No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature.

If withdrawn at any time before three years from the date of the certificate the holder thereof will be entitled to receive $20 per share. If withdrawn any time after three years from the date of the certificate, and before maturity, the holder thereof will be entitled to receive $20 per share and three-fourths of the profits standing to the credit of the stock on the books of the association.

[Certificate printed in black ink, surrounded by border printed in brown ink.]

127 EXHIBIT "O 5."

American Building and Loan Association, Minneapolis, Minn.

[Vignette.]

This certifies that —— ——, of ——, county of ——, State of ——, is a member of the American Building and Loan Association of Minneapolis, Minnesota, and has subscribed for and is the owner and holder of — shares of stock therein. Given under the seal of the American Building and Loan Association, at Minneapolis, Minnesota, this — day of ——, 18—.

—— ——, *Secretary.* —— ——, *President.*

Amount, $—. —— ——, *Recorder.*

This certificate is issued to and is accepted by the holder thereof upon the following express terms and conditions:

First. It is understood that $25 per share has been paid to the association for this stock and that the holder hereof can never be assessed or required to make any further payment hereon for any cause whatever.

Second. The American Building and Loan Association promises to pay to the owner and holder hereof the sum of $1.50 per share per year on this stock, payable semi-annually, on the first day of March and September in each year, until this stock is withdrawn.

Third. Of the money received by the association on this stock there may be placed in the expense fund for each share, $3 for the first year and $1 for each year thereafter while the stock is in force. The balance must be placed in the loan fund to the credit of this stock. Amount deducted for first year includes admission fee of $2.00.

Fourth. The dividends paid on this stock shall be deducted from the profits earned by it; the balance of the profits must be placed to the credit of this stock, on the books of the association. Whenever the amount standing to the credit of this certificate equals $100 per share, the stock shall be deemed to have matured and the holder hereof shall be entitled to withdraw the same and to receive $100 per share therefor.

Fifth. This stock cannot be withdrawn until one year from the date of the certificate. Whenever the holder hereof desires to withdraw this stock he shall give to the association sixty days' notice of such intended withdrawal.

Sixth. Unless the consent of the board of directors is obtained the association cannot be required to use in the payment of withdrawing members in any month more than half as much money as is received from monthly payments during that month.

Seventh. Shares in good standing may be transferred on payment to the association of a transfer fee of fifty cents per share; but in no case shall such fee be less than $1 or more than $3 on any certificate. Shares on which loans have been made can be trans-

ferred only to a purchaser of the mortgaged property. No transfer is good unless made on the books of the association.

Eighth. The board of directors may require any share to be withdrawn at any time after it has matured. If losses occur they shall be deducted from undivided profits as far as possible; any deficiency may be charged up to the shares in force and deducted from the profits accrued thereon.

Ninth. No agent has authority to change this contract in any way, and the association assumes no obligation for any statement not contained in its printed literature.

If withdrawn at any time before two years from the date of the certificate the holder thereof will be entitled to receive $25 per share, less such dividends as have been paid thereon. If withdrawn at any time after two years from the date of the certificate, and before maturity, the holder thereof will be entitled to receive $25 per share and three-fourths of the profits standing to the credit of the stock on the books of the association, less such dividends as have been paid thereon.

[Certificate printed in black ink, surrounded by border printed in green ink.]

128 EXHIBIT "O 6."

American Building and Loan Association, Minneapolis, Minn.

This certifies that —— ——, of ——, county of ——, State of ——, is a member of the American Building and Loan Association of Minneapolis, Minnesota, and has subscribed for and is the owner and holder of — shares of stock therein. Given under the seal of the American Building and Loan Association at Minneapolis, Minnesota, this — day of ——, 18—.

—— ——, *Secretary.* —— ——, *President.*

Amount $—.

This certificate is issued to and is accepted by the holder thereof upon the following express terms and conditions:

First. It is understood that $40 per share has been paid to the association for this stock and that the holder hereof can never be assessed or required to make any further payment hereon for any cause whatever.

Second. Of the money received by the association on this stock there may be placed in the expense fund for each share, $3 for the first year and $1 for each year thereafter while the stock is in force. The balance must be placed in the loan fund to the credit of this stock.

Third. Whenever the amount standing to the credit of this certificate equals $100 per share, the stock shall be deemed to have matured and the holder thereof shall be entitled to withdraw the same and to receive $100 per share therefor.

Fourth. This stock cannot be withdrawn until two years from the

date of the certificate. If withdrawn at any time before maturity the holder thereof will be entitled to receive $40 per share and six per cent. annual interest. Whenever the holder thereof desires to withdraw this stock he shall give to the association sixty days' notice of such intended withdrawal. A fee of fifty cents per share may be charged whenever any shares are withdrawn; but in no case shall such fee be less than $1 or more than $3 on any certificate.

Fifth. Unless the consent of the board of directors is obtained the association cannot be required to use in the payment of withdrawing members in any month more than half as much money as is received from monthly payments during that month.

Sixth. Shares in good standing may be transferred on payment to the association of a transfer fee of fifty cents per share; but in no case shall such fee be less than $1 or more than $3 on any certificate. Shares on which loans have been made can be transferred only to a purchaser of the mortgaged property. No transfer is good unless made on the books of the association.

Seventh. The board of directors may require any share to be withdrawn at any time after it has matured. If losses occur they shall be deducted from undivided profits as far as possible; any deficiency may be charged up to the shares in force.

Eighth. No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature.

[Certificate printed in black ink, surrounded by border printed in brown ink.]

129 EXHIBIT "O 7."

American Building and Loan Association, Minneapolis, Minn.

[Vignette.]

This certifies that —— ——, of ——, county of ——, State of ——, is a member of the American Building and Loan Association of Minneapolis, Minnesota, and has subscribed for and is the owner and holder of — shares of stock therein. Given under the seal of the American Building and Loan Association, at Minneapolis, Minnesota, this — day of ——, 18—.

—— ——, *Secretary.* —— ——, *President.*

Amount, $—.

This certificate is issued to and is accepted by the holder thereof upon the following express terms and conditions:

First. It is understood that $50 per share has been paid to the association for this stock and that the holder hereof can never be assessed or required to make any further payment hereon for any cause whatever.

Second. The American Building and Loan Association promises to pay to the owner and holder hereof the sum of $1.50 per share on this stock, semi-annually, on the first day of March and September in each year, until this stock is withdrawn.

Third. Of the money received by the association on this stock there may be placed in the expense fund for each share, $3 for the first year and $1 for each year thereafter while the stock is in force. The balance must be placed in the loan fund to the credit of this stock.

Fourth. The dividends paid on this stock shall be deducted from the profits earned by it; the balance of the profits must be placed to the credit of this stock, on the books of the association. Whenever the amount standing to the credit of this certificate equals $100 per share, the stock shall be deemed to have matured, and the holder hereof shall be entitled to withdraw the same and to receive $100 per share therefor.

Fifth. This stock cannot be withdrawn until two years from the date of the certificate. If withdrawn at any time before maturity the holder hereof will be entitled to receive $50 per share. Whenever the holder hereof desires to withdraw this stock he shall give to the association sixty days' notice of such intended withdrawal. A fee of fifty cents per share may be charged whenever any shares are withdrawn; but in no case shall such fee be less than $1 or more than $3 on any certificate.

Sixth. Unless the consent of the board of directors is obtained the association cannot be required to use in the payment of withdrawing members in any month more than half as much money as is received from monthly payments during that month.

Seventh. Shares in good standing may be transferred on payment to the association of a transfer fee of fifty cents per share; but in no case shall such fee be less than $1 or more than $3 on any certificate. Shares on which loans have been made can be transferred only to a purchaser of the mortgaged property. No transfer is good unless made on the books of the association.

Eighth. The board of directors may require any share to be withdrawn at any time after it has matured. If losses occur they shall be deducted from undivided profits as far as possible; any deficiency may be charged up to the shares in force.

Ninth. No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature.

[Certificate printed in black ink, surrounded by border printed in green ink.]

130 (Endorsements:) (Copy.) State of Wisconsin. Circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Association, formerly doing business under the name of American Building and Loan Association, and S. A. Peterson, as treasurer of the State of Wisconsin; William D. Hale, as receiver of American Savings and Loan Association, appointed by the district court of Hennepin county, in the State of Minnesota, defendants. Answer of William D. Hale, as receiver of American Savings and Loan Association. Eugene G. Hay, att'y for def't, Minneapolis, Minn. Circuit court, Dane county, Wis. Filed Feb. 1, 1897. C. E.

Parish, clerk. Due and personal service of the within answer is hereby admitted Feb. 1, 1897. W. H. Mylrea, att'y for S. A. Peterson; Lewis & Briggs, att'ys for pl'ff and Rec. Clarke. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

131 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

And now comes M. C. Clarke, the receiver appointed in the above-entitled action, by Lewis, Briggs & Dudgeon, his attorneys, and demurs to the counter-claim set up in the answer in the above-entitled action by William D. Hale, as receiver, for the reason that upon the face thereof it does not state facts sufficient to constitute a counter-claim, because said counter-claim does not state facts sufficient to constitute a cause of action.

LEWIS, BRIGGS & DUDGEON,
Attorneys for Receiver M. C. Clarke.

(Endorsements:) Copy. State of Wisconsin. Circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* The American Savings and Loan Association *et al.*, defendants. Demurrer of M. C. Clarke, receiver, to counter-claim. Service of the within demurrer admitted this 19th day of Feb'y, 1897. Eugene G. Hay, att'y for def't Hale. Circuit court, Dane Co., Wis. Filed Feb. 25, 1897. C. E. Parish, clerk. Lewis, Briggs & Dudgeon, attorneys for receiver. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

132 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

And now comes the above-named plaintiff, by Lewis, Briggs & Dudgeon, his attorneys, and demurs to the counter-claim set up in the answer to the above-entitled action by William D. Hale, as receiver, for the reason that upon the face thereof it does not state

facts sufficient to constitute a counter-claim, because said counter-claim does not state facts sufficient to constitute a cause of action.

LEWIS, BRIGGS & DUDGEON,
Plaintiff's Attorneys.

(Endorsements:) Copy. State of Wisconsin. Circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* The American Savings and Loan Association *et al.*, defendants. Demurrer of plaintiff to counter-claim. Service of the within demurrer admitted this 19th day of Feb'y, 1897. Eugene G. Hay, att'y for def't Hale. Lewis Briggs & Dudgeon, plaintiff's attorneys. Circuit court, Dane Co., Wis. Filed Feb. 25, 1897. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

133 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants.

And now comes S. A. Peterson, as treasurer of the State of Wisconsin, by W. H. Mylrea, as attorney general, his attorney, and demurs to the counter-claim set up in the answer in the above-entitled action by William D. Hale, as receiver, for the reason that upon the face thereof it does not state facts sufficient to constitute a counter-claim, because said counter-claim does not state facts sufficient to constitute a cause of action.

W. H. MYLREA,
Attorney General.

(Endorsements:) Copy. State of Wisconsin. Circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* The American Savings and Loan Association *et al.*, defendants. Demurrer of S. A. Peterson to counter-claim. Service of the within demurrer admitted Feb'y 19, 1897. Eugene G. Hay, att'y for def't Hale. Filed Feb. 25, 1897. C. E. Parish, clerk. W. H. Mylrea, attorney general. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

134 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver, Defendants.

The issues of law raised herein by the demurrer of M. C. Clarke, the receiver appointed by this court in the above-entitled action, to the counter-claim set up in the answer of William D. Hale, as receiver, coming on to be heard at the January, 1897, term of said court, and the same having been argued by counsel, Eugene G. Hay, Esq., appearing for the defendant William D. Hale, as receiver, and W. H. Mylrea, Esq., attorney general, appearing for the defendant S. A. Peterson, and Messrs. Lewis, Briggs & Dudgeon appearing for the plaintiff, L. V. Lewis, and for M. C. Clarke, as receiver, and the court being advised in the premises, it is—

Ordered that said demurrer to said counter-claim be, and the same hereby is, sustained, and that the defendant William D. Hale, as receiver, be allowed to amend and serve a copy of his amended counter-claim within twenty days after service of a copy of this order and payment of ten dollars' costs.

Dated April 10th, 1897.

By the court:

ROBERT G. SIEBECKER, *Judge.*

(Endorsements:) State of Wisconsin. Circuit court for Dane county. L. V. Lewis *vs.* American Savings and Loan Association *et al.* Order sustaining demurrer to counter-claim. Original filed and entered in Record Book 1, page 379, April 10, 1897. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

135 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver, Defendants.

The issues of law raised herein by the demurrer of L. V. Lewis, the plaintiff in the above-entitled action, to the counter-claim set

up in the answer of William D. Hale, as receiver, coming on to be heard at the January, 1897, term of said court, and the same having been argued by counsel, Eugene G. Hay, Esq., appearing for the defendant William D. Hale, as receiver, and W. H. Mylrea, Esq., attorney general, appearing for the defendant S. A. Peterson, and Messrs. Lewis, Briggs & Dudgeon appearing for the plaintiff, L. V. Lewis, and for M. C. Clarke, as receiver, appointed by this court in the above-entitled action, and the court being advised in the premises, it is—

Ordered that said demurrer to said counter-claim be, and the same hereby is, sustained, and that the defendant William D. Hale, as receiver, be allowed to amend and serve a copy of his amended counter-claim within twenty days after service of a copy of this order and payment of ten dollars' costs.

Dated this 10th day of April, A. D. 1897.

By the court:

ROBERT G. SIEBECKER, *Judge.*

(Endorsements:) State of Wisconsin. Circuit court for Dane county. L. V. Lewis *vs.* American Savings and Loan Association *et al.* Order sustaining demurrer to counter-claim, etc. Original filed and entered. Record Book 1, page 380, April 10, 1897. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

136 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver, Defendants.

The issues of law raised herein by the demurrer of S. A. Peterson, as treasurer of the State of Wisconsin, one of the above-named defendants, to the counter-claim set up in the answer of William D. Hale, as receiver, coming on to be heard at the January, 1897, term of said court, and the same having been argued by counsel, Eugene G. Hay, Esq., appearing for the defendant William D. Hale, as receiver, and W. H. Mylrea, Esq., attorney general, appearing for the defendant S. A. Peterson, and Messrs. Lewis, Briggs & Dudgeon appearing for the plaintiff, L. V. Lewis, and for M. C. Clarke, as receiver appointed by this court in the above-entitled action, and the court being advised in the premises, it is—

Ordered that said demurrer to said counter-claim be, and the same hereby is, sustained, and that the defendant William D. Hale, as receiver, be allowed to amend and serve a copy of his amended

counter-claim within twenty days after service of a copy of this order and payment of ten dollars' costs.

Dated this 10th day of April, A. D. 1897.

By the court:

ROBERT G. SIEBECKER,
Circuit Judge.

(Endorsements:) State of Wisconsin. Circuit court, Dane county. L. V. Lewis *vs.* American Savings and Loan Association *et al.* Order sustaining demurrer to counter-claim. Original filed and entered in Record Book 1, page 381. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

137 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver, Defendants.

Please take notice that an order sustaining the demurrer of M. C. Clarke, the receiver appointed by this court in the above-entitled action, to the counter-claim set up in the answer of William D. Hale, as receiver, in the above-entitled action, a copy of which said order is hereunto annexed and served upon you, was entered in the office of the clerk of the circuit court for Dane county, Wisconsin, on the 10th day of April, A. D. 1897.

LEWIS, BRIGGS & DUDGEON,
Attorneys for M. C. Clarke, Receiver, Appointed by Circuit Court for Dane County in This Action.

To Eugene G. Hay, Esq., attorney for defendant William D. Hale, as receiver.

138 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver, Defendants.

The issues of law raised herein by the demurrer of M. C. Clarke, the receiver appointed by this court in the above-entitled action, to the counter-claim set up in the answer of William D. Hale, as re-

ceiver, coming on to be heard at the January, 1897, term of said court, and the same having been argued by counsel, Eugene G. Hay, Esq., appearing for the defendant William D. Hale, as receiver, and W. H. Mylrea, Esq., attorney general, appearing for the defendant S. A. Peterson, and Messrs. Lewis, Briggs & Dudgeon appearing for the plaintiff, L. V. Lewis, and for M. C. Clarke, as receiver, and the court being advised in the premises, it is—

Ordered that said demurrer to said counter-claim be, and the same hereby is, sustained, and that the defendant William D. Hale, as receiver, be allowed to amend and serve a copy of his amended counter-claim within twenty days after service of a copy of this order and payment of ten dollars' costs.

Dated this 10th day of April, A. D. 1897.

By the court:

ROBERT G. SIEBECKER,
Circuit Judge.

(Endorsements:) State of Wisconsin. Circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Ass'n *et al.*, defendants. Notice of entry of order sustaining demurrer and copy of order. Service of a copy of within notice and order is hereby admitted this first day of May, 1897. Eugene G. Hay, att'y for def't W. D. Hale, as receiver. Original filed in circuit court, Dane county, Wis., May 8, 1897. C. E. Parish, clerk. Lewis, Briggs & Dudgeon, att'ys for M. C. Clarke, receiver. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

139 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver, Defendants.

Please take notice that an order sustaining the demurrer of the plaintiff, L. V. Lewis, to the counter-claim set up in the answer of William D. Hale, as receiver in the above-entitled action, a copy of which said order is hereunto annexed and served upon you, was entered in the office of the clerk of the circuit court for Dane county, Wisconsin, on the 10th day of April, A. D. 1897.

LEWIS, BRIGGS & DUDGEON,
Attorneys for Plaintiff.

To Eugene G. Hay, Esq., attorney for defendant William D. Hale, as receiver.

140 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver, Defendants.

The issues of law raised herein by the demurrer of L. V. Lewis, the plaintiff in the above-entitled action, to the counter-claim set up in the answer of William D. Hale, as receiver, coming on to be heard at the January, 1897, term of said court, and the same having been argued by counsel, Eugene G. Hay, Esq., appearing for the defendant William D. Hale, as receiver, and W. H. Mylrea, Esq., attorney general, appearing for the defendant S. A. Peterson, and Messrs. Lewis, Briggs & Dudgeon, appearing for the plaintiff, L. V. Lewis, and for M. C. Clarke, as receiver, appointed by this court in the above-entitled action, and the court being advised in the premises, it is—

Ordered that said demurrer to said counter-claim be, and the same hereby is, sustained, and that the defendant William D. Hale, as receiver, be allowed to amend and serve a copy of his amended counter-claim within twenty days after service of a copy of this order and payment of ten dollars costs.

Dated this 10th day of April, A. D. 1897.

By the court:

ROBERT G. SIEBECKER,
Circuit Judge.

(Endorsements:) State of Wisconsin, circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Ass'n *et al.*, defendants. Notice of entry of order sustaining demurrer and copy of order. Service of a copy of within notice and order is hereby admitted this first day of May, 1897. Eugene G. Hay, att'y for def't W. D. Hale, as receiver. Original. Filed in circuit court, Dane county, Wis., May 8, 1897. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

141 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver, Defendants.

Please take notice—

That an order sustaining the demurrer of S. A. Peterson, as treasurer of the State of Wisconsin, and one of the defendants in the above-entitled action, to the counter-claim set up in the answer of William D. Hale, as receiver, in the above-entitled action, a copy of which said order is hereunto annexed and served upon you, was entered in the office of the clerk of the circuit court for Dane county, Wisconsin, on the 10th day of April, A. D. 1897.

W. H. MYLREA,
Attorney General,
Attorney for S. A. Peterson, as Treasurer of the State of Wisconsin.

To Eugene G. Hay, Esq., attorney for defendant William D. Hale, as receiver.

142 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
THE AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver, Defendants.

The issues of law raised herein by the demurrer of S. A. Peterson, as treasurer of the State of Wisconsion, one of the above-named defendants, to the counter-claim set up in the answer of William D. Hale, as receiver, coming on to be heard at the January, 1897, term of said court, and the same having been argued by counsel, Eugene G. Hay, Esq., appearing for the defendant William D. Hale, as receiver, and W. H. Mylrea, Esq., attorney general, appearing for the defendant S. A. Peterson, and Messrs. Lewis, Briggs & Dudgeon appearing for the plaintiff, L. V. Lewis, and for M. C. Clarke, as receiver, appointed by this court in the above-entitled action, and the court being advised in the premises, it is—

Ordered that said demurrer to said counter-claim be, and the same hereby is, sustained, and that the defendant William D. Hale, as receiver, be allowed to amend and serve a copy of his amended counter-

claim within twenty days after service of a copy of this order and payment of ten dollars costs.

Dated this 10th day of April, A. D. 1897.

By the court:

ROBERT G. SIEBECKER,
Circuit Judge.

(Endorsements:) State of Wisconsin, circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Ass'n *et al.*, defendants. Notice of entry of order sustaining demurrer and copy of order. Service of a copy of within notice and order is hereby admitted this first day of May, 1897. Eugene G. Hay, att'y for def't W. D. Hale, as receiver. Original. Filed in circuit court, Dane county, Wis., May 8, 1897. C. E. Parish, clerk. W. H. Mylrea, att'y gen., attorney for S. A. Peterson, as treas. of State of Wisconsin. Filed June 25, 1899. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

143 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin; William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County, of the State of Minnesota, Defendants.

Notice of Appeal.

Please take notice that William D. Hale, as receiver of the American Savings and Loan Association, one of the defendants above-named, hereby appeals to the supreme court of the State of Wisconsin from the order made in this action by the circuit court of Dane county aforesaid and from the whole thereof, which order was entered of record in said circuit court on the 10th day of April, 1897, sustaining the demurrer of L. V. Lewis, the above-named plaintiff, to the counter-claim set up in the answer of said William D. Hale, as receiver of the American Savings and Loan Association; from the order made in this action by the said circuit court and from the whole thereof, which order was entered of record in said circuit court on the 10th day of April, 1897, sustaining the demurrer of S. A. Petersen, as treasurer of the State of Wisconsin, one of the defendants above named, to the counter-claim set up in the answer of William D. Hale, as receiver of the American Savings and Loan Association, and from the order made in this action by said circuit court and from the whole thereof, which order was

entered of record in said circuit court on the 10th day of
144 April, 1897, sustaining the demurrer of M. C. Clarke, as receiver of the American Savings and Loan Association, appointed by said circuit court for Dane county, to the counter-claim set up in the answer of said William D. Hale, as receiver of the American Savings and Loan Association.

Dated the first day of May, 1897.

EUGENE G. HAY,
Attorney for William D. Hale, as Receiver of the American Savings and Loan Association.

To Lewis, Briggs & Dudgeon, Esquires, attorneys for L. V. Lewis, and M. C. Clarke, as receiver of the American Savings and Loan Association, and to W. H. Mylrea, Esq., attorney general, attorney for S. A. Peterson, as treasurer of the State of Wisconsin, and to C. E. Parish, clerk of the circuit court for Dane county.

(Endorsements:) State of Wisconsin, circuit court, Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Association *et al.*, defendants. Circuit court, Dane county. Filed May 8, 1897. C. E. Parish, clerk. Notice of appeal of William D. Hale, as receiver American Savings and Loan Association. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug.
145 30, 1899. Clarence Kellogg, clerk of supreme court Wis. Service of the within notice of appeal is hereby admitted this 4th day of May, 1897. Lewis, Briggs & Dudgeon, attorneys for L. V. Lewis and M. C. Clarke, as receiver of the American Savings and Loan Association. W. M. Mylrea, attorney general, attorney for S. A. Peterson, as treasurer of the State of Wisconsin.

146 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Respondent,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Respondents; William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County, of the State of Minnesota, Appellant.

Undertaking on Appeal.

Whereas on the 10th day of April, A. D. 1897, orders were filed of record in the circuit court for Dane county aforesaid sustaining the demurrers theretofore filed by L. V. Lewis, S. A. Peterson, as treasurer of the State of Wisconsin, and M. C. Clarke, as receiver of the American Savings and Loan Association, the above-named respondents, to the counter-claim set up in the answer of William D.

Hale, as receiver of the American Savings and Loan Association, the appellant above named, and the above-named appellant, feeling aggrieved thereby, intends to appeal therefrom to the supreme court of the State of Wisconsin:

Now, therefore, we, Wayne Ramsay, of Madison, county of Dane and State of Wisconsin, and H. C. Geiger, of the city of Madison, county of Dane, State of Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake that the said appellant will pay all costs and damages which may be awarded against him on said appeal, not exceeding two hundred and fifty dollars.

WAYNE RAMSAY.
H. C. GEIGER.

STATE OF WISCONSIN, } ss:
County of Dane, }

147 Wayne Ramsay and H. C. Geiger, being first duly sworn, says, each for himself, that he is one of the subscribers to the foregoing undertaking; that he is a resident of the State of Wisconsin and is worth the sum of two hundred and fifty dollars, over and above all his debts and liabilities, in property within the State of Wisconsin not by law exempt from execution.

WAYNE RAMSAY.
H. C. GEIGER.

Subscribed and sworn to before me this 6th day of May, 1897.
JOHN J. REINKING,
Notary Public, Dane County, Wis.

(Endorsements:) State of Wisconsin, circuit court, Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Association *et al.*, defendants. Circuit court, Dane county, Wis. Filed May 8, 1897. C. E. Parish, clerk. Undertaking on appeal. Service of a copy of the within undertaking admitted the 6th day of May, 1897. Lewis, Briggs & Dudgeon, att'ys for pl'ff and rec'v'r Clarke. W. H. Mylrea, att'y gen. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1859. Clarence Kellogg, clerk of supreme court Wis.

148 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association; S. A. Peterson, as Treasurer of the State of Wisconsin, and William D. Hale, as Receiver of American Savings and Loan Association, Appointed by the District Court of Hennepin County, in the State of Minnesota, Defendants.

An appeal having been taken and perfected by the defendant William D. Hale, as receiver, from the orders of this court entered

on the 10th day of April, 1897, sustaining demurrers to the counter-claim set up in the answer of the said defendant, William D. Hale, as receiver, and it appearing to the court that the original papers in the above-entitled action should be kept on file in the office of the clerk of said court for reference thereto and for the necessary and convenient discharge by M. C. Clarke, the receiver of the defendant association, appointed as such by this court, of his duties as such receiver, it is—

Ordered that the clerk of said court transmit to the supreme court of the State of Wisconsin copies of the orders appealed from and of the original papers used by each party on the application for the orders appealed from, to wit, copies of the following papers:

Summons.

Complaint.

Affidavit and orders to show cause why receiver should not be appointed.

149 Affidavit of service of same.

Answer of Sewell A. Peterson, as State treasurer.

Reply of plaintiff to answer of defendant Peterson,

Stipulation submitting issue between plaintiff and defendant Peterson.

Order appointing receiver.

Notice of filing and entering of order appointing receiver.

Affidavit of service of said order.

Notice of appearance of defendant association.

Petition of William D. Hale, as receiver, to be made a party to the action.

Order of court making Wm. D. Hale, as receiver, a party.

Answer and counter-claim of Wm. D. Hale, as receiver.

Demurrers of plaintiff M. C. Clarke, as receiver, and S. A. Peterson, as State treasurer, to answer and counter-claim of defendant William D. Hale, as receiver.

Orders sustaining each of said demurrers.

Notice of entry of said orders.

Dated at Madison, Wisconsin, this 26th day of May, A. D. 1897.

By the court:

ROBERT G. SIEBECKER,
Circuit Judge.

To Charles E. Parish, Esq., clerk of circuit court of Dane county, Wisconsin.

(Endorsements:) Filed and entered, Rec. Book 2, page 53, June 19, 1897. C. E. Parish, clerk. Filed June 25, 1897. Clarence Kellogg, clerk of supreme court Wis. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

150 Be it remembered that at a term of the supreme court of the State of Wisconsin, begun and held at the capitol, in Madison, the seat of government of said State, on the second Tuesday, to wit, on the 11th day of January, A. D. 1898, on the first day

of the term, to wit, on the 11th day, of January, A. D. 1898—present, John B. Cassoday, chief justice; John B. Winslow, Silas U. Pinney, Alfred W. Newman, and R. D. Marshall, justices of said court—the following proceedings were had *inter alia*, to wit:

L. V. LEWIS, Respondent,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION and S. A. Peterson, as Treasurer of the State of Wisconsin, Respondents; William D. Hale, as Receiver of the American Savings and Loan Association, Appellant.

Appeal from Circuit Court, Dane County, State of Wisconsin.

This cause came on to be heard on appeal from the orders of the circuit court of Dane county, and was argued by counsel; on consideration whereof it is now here ordered and adjudged by this court that the orders of the circuit court of Dane county appealed from in this cause be, and the same are hereby, affirmed, with costs against the said appellant, taxed at the sum of sixty-five and $\frac{65}{100}$ dollars ($65.65).

STATE OF WISCONSIN, *ss:*

Supreme Court.

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that I have compared the [SEAL.] above and foregoing with the original order and judgment of the court in the above-entitled cause, and that it is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 17th day of February, A. D. 1898.

CLARENCE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

151 (Endorsements:) State of Wisconsin, supreme court. L. V. Lewis, respondent, against American Savings and Loan Association *et al.*, respondents; William D. Hale, as receiver, appellant. Remittitur. Circuit court, Dane county, Wis. Filed Feb. 17, 1898. C. E. Parish, clerk. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

152 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association; S. A. Peterson, as Treasurer of the State of Wisconsin; William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County, of the State of Minnesota, Defendants.

The above-entitled case came regularly on for hearing, plaintiff being represented by Erdall & Swansen, and the defendants Clarke & Peterson being represented by the same firm, and the defendant Hale being represented by Hay & Van Campen, and the said defendant, Hale, having failed and refused to amend his counter-claim set up in his answer, but announced in open court that he elects to stand on the record as heretofore made:

It is therefore ordered that judgment be entered that the defendant Hale take nothing by this action, and that the plaintiff have judgment against said defendant, Hale, for his costs.

By the court:

ROBERT G. SIEBECKER, *Judge.*

(Endorsements:) State of Wisconsin, circuit court, Dane county L. V. Lewis, plaintiff, *vs.* American Savings and Loan Association *et al.* Order for judgment. Filed and entered, Rec. Book 6, page 364, July 29, 1899. A. T. Torgeson, clerk. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

153 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association; S. A. Peterson, as Treasurer of the State of Wisconsin; William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County, of the State of Minnesota, Defendants.

This case having been regularly on the calendar of the above-named court for the June, 1899, term thereof, came on for trial before the court without a jury, and the defendant Hale having failed and refused to amend the counter-claim set up in his answer, and the court, being fully advised in the premises, did, on the 29th day

of July, 1899, duly make and file its order directing judgment against the defendant Hale and in favor of the plaintiff.

Now, pursuant to said order and on motion of Erdell & Swansen, attorneys for the plaintiff, it is hereby adjudged that the said defendant, Hale, take nothing by this action, and that the plaintiff recover of said defendant, Hale, the sum of $60.03 costs and disbursements as taxed.

By the court:

ROBERT G. SIEBECKER, *Judge.*

(Endorsements:) State of Wisconsin, circuit court for Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Association *et al.*, defendants. Judgment. Filed and entered, Rec. Book 6, page 365, July 29, 1899. A. T. Torgeson, clerk. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

154 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association; S. A. Peterson, as Treasurer of the State of Wisconsin; William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County, of the State of Minnesota, Defendants.

It is hereby stipulated by and between M. C. Clarke, as receiver of the American Savings and Loan Association, appointed by the circuit court for Dane county, Wisconsin, and William D. Hale, as receiver of the American Savings and Loan Association, appointed by the district court of Hennepin county, Minnesota, by and through their respective attorneys, that inasmuch as the original record and judgment-roll in the above-entitled action is required to be retained for use by said M. C. Clarke in the conduct of said receivership that upon an appeal from the judgment heretofore rendered in said action copies of said judgment-roll and of said record may be transmitted to the Supreme Court upon appeal in lieu of the originals thereof.

ERDALL & SWANSEN,
Attorneys for M. C. Clarke, as Receiver of the American Savings and Loan Association.
HAY & VAN CAMPEN,
Attorneys for William D. Hale, as Receiver of the American Savings and Loan Association.

(Endorsements:) Filed and entered, Rec. Book 6, page 366, Aug. 29, 1899. A. T. Torgeson, clerk. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court.

155 STATE OF WISCONSIN:

Circuit Court for Dane County.

L. V. LEWIS, Plaintiff,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION, Formerly Doing Business under the Name of American Building and Loan Association; S. A. Peterson, as Treasurer of the State of Wisconsin; William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County, of the State of Minnesota, Defendants.

Upon the foregoing stipulation, and it appearing to the court that notice of appeal has been served in the above-entitled action—

It is hereby ordered that the clerk of this court be, and he hereby is, directed to transmit to the supreme court upon the appeal of this action copies of the judgment-roll and record herein in lieu of the originals thereof.

By the court:

ROBERT G. SIEBECKER, *Judge.*

(Endorsements:) State of Wisconsin, circuit court, Dane county. L. V. Lewis, plaintiff, *vs.* American Savings and Loan Association *et al.* Stipulation and order directing copy of record to be transmitted upon appeal. Filed and entered, Rec. Book 6, page 367, Aug. 29, 1899. A. T. Torgeson, clerk. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

156 STATE OF WISCONSIN, *Dane County,* } *ss:*

In Circuit Court for Dane County.

I, Mary Grane, deputy clerk of said court, do hereby certify that the foregoing and annexed paper-writing are the original notice of appeal and waiver of undertaking on appeal, and are true and correct copies of the original summons, complaint, order to show cause, affidavit of service of same, answer of Sewall A. Peterson, reply of plaintiff to defendant Peterson's answer, stipulation submitting issue between plaintiff and defendant Peterson, order appointing receiver, notice of filing and entering order, affidavit of service of order, appearance of defendant association, petition of Receiver Hale to be made a party to the action, order of court making Receiver Hale a party, answer of Receiver Hale, demurrer of Clarke, receiver; demurrer of plaintiff, demurrer of defendant Peterson, order of court sustaining Receiver Clarke's demurrer, order of court sustaining plaintiff's demurrer, order of court sustaining defendant Peterson's demurrer, notice of entry of order sustaining Receiver Clarke's demurrer, notice of entry of order sus-

taining plaintiff's demurrer, notice of entry of order sustaining defendant Peterson's demurrer, notice of appeal by Receiver Hale from the orders sustaining the demurrers of defendant Peterson, Receiver Clarke, and the plaintiff; undertaking on appeal from orders sustaining demurrers, order of court directing clerk to transmit to the supreme court of Wisconsin copies of the orders appealed from and of the original papers used by each party on the application for the orders appealed from, remittitur from the supreme court of the State of Wisconsin, order for judgment, and judgment; which said copies are transmitted pursuant to the original order of court hereunto annexed, and which original papers have been filed in my office in the action wherein L. V. Lewis is plaintiff and The
157 American Savings and Loan Association *et al.* are defendants; that the same are hereby transmitted to the justices of the supreme court of the State of Wisconsin, in pursuance of said notice of appeal, and that there *is* hereby so transmitted copies of all papers used by both parties upon which judgment herein was entered.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the city of Madison, in said county, this 30th day of August, A. D. 1899.

MARY GRANE,
[SEAL.] *Deputy Clerk of the Circuit Court.*

(Endorsement:) Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

158 STATE OF WISCONSIN:

Supreme Court, August Term, A. D. 1899.

L. V. LEWIS, Plaintiff and Respondent,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION and S. A. PETERSON, Treasurer of the State of Wisconsin, Defendants and Respondents, and William D. Hale, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County and State of Minnesota, Defendant and Appellant.

It is hereby stipulated by and between the parties hereto, by their respective attorneys, that the printing and serving of the record herein be, and the same is hereby, waived.

It is further stipulated by and between the parties hereto, by their respective attorneys, that the above-entitled cause may be immediately placed upon the calendar of the August, A. D. 1899, term of the above-entitled court and upon the first assignment of said term, and that the same may be immediately submitted to the court upon

the written assignment of errors herewith, filed by the defendant and appellant, William D. Hale, without argument.

ERDALL & SWANSEN,
Attorneys for Plaintiff and Resp-ndent.
E. R. HICKS,
Att'y General, Attorney for State Treasurer of the State of Wisconsin.
ERDALL & SWANSEN,
Attorneys for M. C. Clarke, Receiver.
HAY & VAN CAMPEN,
Attorneys for William D. Hale, Defendant and Appellant.

159 (Endorsements:) Original. State of Wisconsin, supreme court. L. V. Lewis, plaintiff and respondent, *vs.* William D. Hale, receiver of the American Savings and Loan Association, defendant and appellant. Stipulation. Filed Aug. 30, 1899. Clarence Kellogg, clerk of supreme court Wis.

160 STATE OF WISCONSIN:

Supreme Court, August Term, A. D. 1899.

L. V. LEWIS, Plaintiff and Respondent,
vs.
AMERICAN SAVINGS & LOAN ASSOCIATION and S. A. PETERSON, as Treasurer of the State of Wisconsin, Defendants and Respondents, and William D. Hale, as Receiver of the American Savings & Loan Association, Appointed by the District Court of Hennepin County and State of Minnesota, Defendant and Appellant.

William D. Hale, as receiver of the American Savings & Loan Association, defendant and appellant, for his assignment of errors herein says:

1st. That the court erred in rendering judgment for the plaintiff and against the defendant William D. Hale for the reason that the law of the State of Wisconsin, to wit, section 2014 A, Sanborn & Berryman's Annotated Statutes, is repugnant to the Constitution of the United States and invalid in this, that said law is in conflict with section 2 of article 4 of the Constitution of the United States.

2nd. The court erred in rendering judgment in favor of the plaintiff and against the defendant William D. Hale for the reason that by said judgment privileges and immunities are granted to the citizens of Wisconsin which are denied to the defendant William D. Hale and the citizens of the several States other than the State of Wisconsin, represented by him.

3rd. The court erred in rendering said judgment in favor of the plaintiff and against the defendant William D. Hale for the reason that the statutes of the State of Wisconsin upon which said judgment is based, to wit, section 2014 A, Sanborn & Berryman's Annotated Statutes of the State of Wisconsin, is invalid and repugnant

to the Constitution of the United States, in that said law im-
161 pairs the obligation of the contracts entered into between the American Savings & Loan Association and the 162 shareholders of said association, residents of Wisconsin, who became such shareholders prior to the passage of said law, and impairs the obligation of the contracts entered into by said association with each and every of the shareholders thereof, in whatever State residing, and impairs the obligation of the contracts entered into by each of the shareholders of said association with each other upon becoming shareholders of said association, and is therefore in conflict with section 10 of article 1 of the Constitution of the United States.

HAY & VAN CAMPEN,
Attorneys for Appellant.

162 [Endorsed:] State of Wisconsin, supreme court. L. V. Lewis, plaintiff and respondent, *vs.* American Savings & Loan Association *et al.*, defendants and respondents, and William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin Co., State of Minnesota, defendant and appellant. Assignments of error.

163 And afterward, to wit, on the fifth day of September, A. D. 1899, the same being the second day of said term, the following proceedings were had herein in the words and figures following—that is to say:

Dane Circuit Court.

L. V. LEWIS, Respondent,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION and S. A. PETERSON, as Treasurer of the State of Wisconsin, Respondents; William D. Hale, as Receiver of the American Savings and Loan Association, Appellant.

And now, at this day, came the parties herein, by their attorneys, and, upon the stipulation of the attorneys heretofore filed herein moved the court now here to place this cause upon the calendar of the present term of this court and upon the first assignment of said term, and submit the same to the court upon the written assignment of errors filed herein, without oral argument, waiving the printing of case and briefs; and the court being now sufficiently advised of and concerning the same, it is now here ordered and adjudged by this court that said motion be, and the same is hereby, granted.

164 And afterward, to wit, on the twenty-sixth day of September, A. D. 1899, the same being the eleventh day of said term, the court rendered its judgment in said cause in the words and figures following—that is to say:

Dane Circuit Court.

L. V. LEWIS, Respondent,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION and S. A. Peterson, as Treasurer of the State of Wisconsin, Respondents; William D. Hale, as Receiver of the American Savings and Loan Association, Appellant.

Opinion by Justice Winslow.

This cause came on to be heard on appeal from the judgment of the circuit court of Dane county, and was submitted by counsel; on consideration whereof it is now here ordered and adjudged by this court that the judgment of the circuit court of Dane county in this cause be, and the same is hereby, affirmed with costs against the said appellant, taxed at the sum of — dollars.

165 Whereupon the following opinion was filed in said cause by Justice Winslow in the words and figures following—that is to say:

L. V. LEWIS, Respondent,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION and S. A. PETERSON, as Treasurer of the State of Wisconsin, Respondents; William D. Hale, as Receiver of the American Savings and Loan Association, Appellant.

WINSLOW, *J.*:

This is an appeal by the defendant Hale as receiver from a judgment dismissing his counter-claim.

The sufficiency of this counter-claim was passed upon by this court when the case was here upon appeal from the order sustaining a demurrer thereto (Lewis *vs.* A.S. & L. A. *et al.*, 98 Wis., 203). When the case was remitted to the trial court the defendant Hale elected to stand upon his counter-claim, and thereupon the judgment was rendered from which this appeal is taken.

It is unnecessary to restate the grounds upon which the counter-claim was held insufficient. They will be found fully stated in the former opinion, which may be regarded as expressing our present views, and for those reasons the present judgment must be affirmed.

By the COURT: Judgment affirmed.

166 *Opinion of Justice Pinney on Appeal from Order Sustaining Demurrer, Filed January* 11, 1898, *and Referred to in the Foregoing Opinion of Justice Winslow.*

L. V. LEWIS, Respondent,
vs.
AMERICAN SAVINGS AND LOAN ASSOCIATION and S. A. PETERSON, as Treasurer of the State of Wisconsin, Respondents; William D. Hale, as Receiver of the American Savings and Loan Association, Appellant.

The American Building and Loan Association was incorporated and organized April 15, 1887, under and by virtue of the laws of Minnesota, as a building and loan association, having its principal office and place of business at Minneapolis, Minn., and it continued to transact its corporate business there until 1893, when its corporate name was changed to that of the American Savings and Loan Association. The general nature of its business was declared to be "to assist its members in saving and investing money and in buying and improving real estate and in procuring money for other purposes, by loaning or advancing under the mutual building society plan, to such of them as might desire to anticipate the ultimate value of their shares, funds accumulated from the monthly contribution of its stockholders, and also such other funds as may from time to time come into its hands." The government of the corporation and the management of its affairs was vested in a board of seven directors, elected by the stockholders. Membership was acquired by taking stock in the company and paying the prescribed admission fee. The directors were authorized "to enter into such contracts and agreements and appoint such agents for its business management as they may deem for the best interest of its affairs;" and the directors "might sell and dispose of the mortgages held by the corporation whenever they might deem best and as provided by the by-laws." No by-laws were ever passed on this
167 subject. July 11, 1889, the articles of incorporation were amended so as to provide that "the board of directors shall not sell or dispose of any of the mortgages held or owned by this corporation." The principal question presented by the appeals is as to the construction, validity, and effect of the law of Wisconsin requiring foreign mutual building and loan associations to make a deposit of securities of the value of $100,000 with the State treasurer of Wisconsin as a condition upon which such corporation might receive a license from and do business in the State. The statute—S. & B. Stat., secs. 2014, 2014*b*—provides that "no foreign building and loan association shall issue its shares, receive moneys, or transact any business in this State, unless such association shall have and keep on deposit with the State treasurer of Wisconsin, in trust for the benefit and security of its members in this State, the securities of the actual cash value of $100,000 of the kind mentioned in section 2 of this act, to be approved and accepted by said State treas-

urer, and held in trust as aforesaid, until all shares of such association held by residents of this State shall have been fully redeemed and paid off by such association and until its contracts and obligations to persons and members residing in this State shall have been fully performed and discharged," and it was provided that "if any securities on deposit as provided in this act are wholly or partially extinguished by payments on the same or otherwise, or such securities depreciate in value for any cause, new securities must be added, so that the deposit may at all times be kept good and of the value of $100,000." The defendant association was doing business in this State from the time of the passage of the above act, having 246 members in Wisconsin, 162 of whom became such prior to the date on which the law went into force, to wit, April 19, 1889. The plaintiff Lewis, a resi-
dent of Wisconsin, the holder of five shares of stock, upon
168 which $243 had been paid, alleging that there are a large
number of residents and citizens of the State of Wisconsin legal members owning and holding stock in the defendant association, whose names he was unable to get, or their post-office address, charged that the defendant association was insolvent; that a large part of its assets had been improvidently invested and squandered, and that on the application of a creditor or creditors thereof residing in Minnesota, William D. Hale, the appellant, had been appointed receiver of all the property of the defendant association by the courts of Minnesota in proceedings initiated therein; that under the laws of Wisconsin the defendant was entitled to withdraw all the securities deposited with the State treasurer and substitute other and similar securities therefor, and that during the year then passed the defendant association had withdrawn a large portion of the securities theretofore duly deposited with the State treasurer of Wisconsin and substituted in their stead other securities; that such securities so deposited consist in large part of mortgages upon real estate, which are likely to depreciate in value unless enforced according to law, and that the only property of said association in Wisconsin was the securities aforesaid, which if not preserved and properly cared for and converted into cash, it would be impossible for resident members of said association to recover back moneys paid into said association; that it was necessary for the protection of the rights of the plaintiff and of the members and stockholders in said defendant association resident in the State of Wisconsin that a receiver for the defendant association in Wisconsin should be appointed, in order to ascertain all of the members and stockholders in said association residing in Wisconsin and the amount of their respective claims and to convert into money the securities so deposited for their protection and distribute the same to such per-
sons as may be entitled thereto under the direction and super-
169 vision of the court, and an injunction was sought restraining
the defendant Peterson, as State treasurer, from in any manner parting with the custody and control of said securities and permitting any withdrawal or substitution of the same. Judgment was prayed that said securities so held be sequestrated and distributed among the members and stockholders of said association

who are residents of the State of Wisconsin, including the plaintiff, according to law; that a receiver or receivers to take charge thereof and convert the same into money, with the usual powers and authority, be appointed. An injunction restraining and enjoining all persons from proceeding in any manner or way to obtain a lien on said securities and from in any manner interfering with or intermeddling with the same was prayed for, and that the court direct notice to be given, as it might deem proper, requiring all members and stockholders of said association who are residents of the State of Wisconsin to submit their claims and become parties to the action within such reasonable time as might be fixed by the court, and for such other and further relief, &c. In addition to these facts it appeared from the pleadings that some time prior to May 10, 1889, the defendant association deposited with the State treasurer of the State of Wisconsin, in trust for the benefit and security of all its members in that State, securities consisting of mortgages taken by it in the course of its business to the actual cash value of $100,000, which were duly approved and accepted by such treasurer, and which had since been held in trust by him and his successors in office under the laws of this State relating to foreign building and loan associations, by which the State treasurers are required to hold such securities until all shares of stock in said association shall have been fully redeemed and paid off by the defendant association and until all contracts and obligations of the defendant asso-
170 ciation to members and persons residing in the State of Wisconsin shall have been fully performed and discharged; that the defendant Peterson, as such State treasurer, holds said securities in his custody under said trust to the face value of $113,891.80. The appellant, William D. Hale, who had been appointed by the district court of Hennepin county receiver for said association, petitioned the court to be made a defendant in the action in the circuit court for Dane county, and it was ordered accordingly, and he interposed an answer and counter-claim, in which he admitted that the association was duly licensed by the State of Wisconsin to do business in said State in the year 1889, which said license was continued from time to time thereafter until the first day of January, 1894. The plaintiff and the defendant S. A. Peterson, as treasurer, etc., and M. C. Clarke, the receiver appointed by the circuit court of Dane county, Wisconsin, demurred to said answer and counter-claim. Orders were entered sustaining the demurrers, from which the defendant William D. Hale, the receiver appointed by the Minnesota court, appealed. The board of directors of the defendant association passed a resolution May 1, 1889, as follows: "Resolved, that the State treasurer of Wisconsin be made a depository of the association for temporary convenience in complying with the law of Wisconsin in regard to the deposit of securities, $100,000; also resolved, that the association comply with the Wisconsin law as soon as possible." The counter-claim alleged (1) that the mortgages belonging to the American Savings and Loan Association in the possession of S. A. Peterson, State treasurer, at the time of making and filing plaintiff's complaint aggregated in value the

sum of $145,234; that prior to the 11th of July, 1889, there *was* delivered to said Peterson, as such treasurer, mortgages of said association aggregating in value the sum of $103,060, of which there remained in his hands at the time of making and filing the plaintiff's complaint, as a part of the mort-
171 gages first above stated, mortgages aggregating in value the sum of $20,784, and between July 11, 1889, and the first of January, 1894, there *was* of the mortgages above stated as in the possession of said State treasurer at the time of making and filing the complaint, delivered to him at various times, mortgages aggregating $80,850, and after January 1, 1894, there was delivered to him the remainder of said mortgages which were in his possession at the time of the making and filing of said complaint, aggregating in value the sum of $43,600; that of the mortgages delivered to him subsequent to the 11th day of July, 1889, a large part thereof were delivered to him in lieu of mortgages in his possession prior to said date which had been by him surrendered to said association, and the remainder thereof were delivered to him as an addition to those delivered prior to that date; (2) that all of said mortgages are regular building and loan association mortgages made and executed by shareholders and members of said association to secure the payment by said members of their regular instalments of dues upon their stock, upon which said stock they had been granted an advancement or loan and to secure the payment of the amount of such loan, and that they were non-negotiable and could not be transferred by said association; (3) that being a mutual building and loan association, it had no power or authority at any time to pledge, transfer, assign, sell, or dispose of any of its mortgages, and that none of said mortgages were deposited with said State treasurer by said association, but were given and delivered to him by officers and employés of said association who were not authorized by said association to so deliver the same, and that they kept in the books of said association a statement or account of said mortgages so delivered to said treasurer; (4) that said mortgages and each of them held by the State treasurer at the time of making and filing
172 the complaint were held by him wrongfully and without right or authority of law for said possession; that the shareholders had no knowledge whatever of the delivery of said mortgages, nor did they at any time consent thereto or acquiesce therein; that the only action ever taken by said association relative to making a deposit with the State treasurer of Wisconsin was taken by its board of directors on the first of May, 1889, at a call meeting of said board, as hereinbefore stated. The entire number of shareholders residing in Wisconsin when the action was commenced was 246, 162 of which had become such prior to the time when the Wisconsin statute took effect; (5) the Wisconsin shareholders, on becoming members, etc., subscribed for their shares of stock in the same manner and received like certificates therefor as did all the other shareholders of said association wheresoever residing, and that said association was a mutual corporation, and that each shareholder therein, including the plaintiff, and "all the other shareholders in

Wisconsin enjoyed and were subject to like rights, privileges, immunities, and liabilities that other members enjoyed;" (6) that under its articles of incorporation none of the shareholders of the association did or could have higher or superior rights than those enjoyed by all; that at the date of appellant's appointment it had shareholders in 35 States, owned real estate in 19 States, and held mortgages on real estate in 29 States; (7) that the association had violated certain laws of the State of Minnesota, had become insolvent and incapable of effectuating the object for which it was organized and created, and incapable of carrying out its contracts and obligations, and that the appellant, William D. Hale, was duly appointed, pursuant to the statutes of Minnesota, as fully set forth, by the district court of Hennepin county, general receiver of such association in an action wherein The State of Minnesota, on the relation of its attorney general, was plaintiff and said association was defendant,
173 and that the order appointing him required him to take charge of all the property and effects of such association, to collect, sue for, and recover all debts, dues, and demands that were due said association, and to manage and administer all the affairs of said association under the direction of said court; that pursuant to said order and appointment the said association executed and delivered to the receiver, William D. Hale, deeds of all the real estate owned by it, and due and sufficient assignments of all its property, including said mortgages herein referred to as being in the possession of said Peterson, as treasurer of the State of Wisconsin, on the 14th day of January, 1896; (8) that M. C. Clarke on the 5th of February, 1896, was by the order of the circuit court of Wisconsin for Dane county appointed receiver of said association for the State of Wisconsin, and the defendant S. A. Peterson, State treasurer, was ordered and directed to turn over all the said mortgages referred to in the plaintiff's complaint and specified in the answer and counter-claim to said Clarke, as such receiver, and that the said Peterson had turned over and delivered the same accordingly, and that said Clarke was proceeding to collect the same, and would, unless interfered with by the court, distribute the proceeds of the same to the shareholders resident in Wisconsin, thereby giving to said Wisconsin shareholders a preference over the other shareholders of said association; (9) that the assets of the association are not sufficient to pay to all its shareholders dollar for dollar of the amount which they had paid in or any other or greater sum than forty per cent. thereof; that if said Clarke, acting as receiver, should collect said moneys and distribute the proceeds thereof to the Wisconsin shareholders they would receive dollar for dollar of the amount they paid in to said association, and thereby be constituted a preferred class of shareholders, against equity
174 and good conscience and contrary to the purposes of said association, as defined by its articles of incorporation, by-laws, and contracts for membership with its shareholders, and, finally, that the law under which it is alleged said mortgages were deposited was intended to protect said Wisconsin shareholders in all their rights growing out of their membership in said association and not

for the purpose of extending, altering, or changing said rights; that the purpose for which any deposit made by said association with said State treasurer under said law was made terminated and was at an end when said association became insolvent and incapable of carrying out its contracts and effectuating the purposes of its being. The defendant prayed that the court might by its decree direct said Clarke, as such receiver, to turn over and deliver said mortgages so held by him to said William D. Hale, to be by him collected and the proceeds equitably distributed to all the shareholders wherever residing, and for general relief.

PINNEY, *J.*:

The principal question presented by these appeals is as to the construction, validity, and effect of the law of Wisconsin requiring foreign mutual building and loan associations to make a deposit of securities of the value of $100,000 with the State treasurer as a condition upon which such corporations may receive a license from and transact business in this State. The statute, sec. 2014, 2014*b*, S. & B. Stat., provides that "no foreign building and loan association shall issue its shares, receive moneys, or transact any business in this State unless such association shall have and keep on deposit with the State treasurer of Wisconsin, in trust for the benefit and security of all its members in this State, the securities of the actual cash value of $100,000 of the kind mentioned in section 2 of this act, to be approved and accepted by said State treasurer and held in trust as aforesaid, until all shares of such association held by resi-
175 dents of this State shall have been fully redeemed and paid off by such association and until its contracts and obligations to persons and members residing in this State shall have been fully performed and discharged." The deposit is required at all times to be kept good and of the value of $100,000. The defendant corporation, in order to be allowed to enter the State and transact its proper business as a building and loan association therein and to obtain a license to that end, as it did May 10, 1889, which was renewed from time to time and continued in force during the entire period it transacted business in said State, deposited with the State treasurer of Wisconsin, as it appears, its mortgage securities taken in the course of its business to the required amount. The defendant corporation was a foreign corporation created and existing under the laws of the State of Minnesota, located and having its principal office in Minneapolis. The general nature of its business was "to assist its members in saving and investing money, in buying real estate, and in procuring money for other purposes by loaning or advancing under the mutual building society plan." By art. 6 of its articles of association the government of the corporation and the management of its affairs was vested in a board of seven directors chosen from and by the stockholders. By its amended articles of association adopted July 31, 1889, art. 19, it was provided that "the board of directors may sell and dispose of the mortgages

held by this corporation whenever they may deem best and as provided by the by-laws;" but no by-laws on the subject were adopted. Art. 16 of the same date provided that "the directors of this corporation may enter into such contracts and agreements and appoint such agents as they may deem best for the interest of its affairs." Art. 19 was amended July 11, 1889, so as to read as follows: "The board of directors shall not sell or dispose of any of the
176 mortgages owned by this corporation." The Minnesota statute, ch. 236 of the General Laws for 1889, which became a law April 22nd of that year, before the defendant corporation was licensed to do business in Wisconsin, as amended June 1, 1891, and embodied in R. S. Minnesota, sec. 2860, provided in substance that every building and loan association governed by the act should deposit and keep with the State auditor or a trust company all mortgages or other securities received by it in the usual course of business, and that whenever required by the laws of any other State, Territory, or nation its securities sufficient to allow such association to enter and do business in such State, Territory, or nation might be deposited with some officer authorized to receive the same in such State, Territory, or nation under the laws thereof for the benefit of its members and creditors. Provisions were made regulating the transfer accordingly, which are so extended as not to admit of convenient quotation; but they seem to plainly recognize as lawful a deposit in another State of securities of the association in order to entitle it to a license to enter such State and transact its business therein. Suffice it to say that the provisions of the Minnesota statute seem designed to facilitate the convenient using and tracing of its securities deposited for the purpose indicated, and its provisions appear to be in the main directory. Compliance with it appears to be a matter of local administration and not a condition precedent to the right to use and deposit its securities for the purpose of entering and transacting business in such other State. Within twenty days after the enactment of the Wisconsin statute the corporation had constituted the State treasurer of Wisconsin "a depository for temporary convenience in complying with the laws of Wisconsin in regard to deposit of securities, $100,000," and resolved that it would "comply with the Wisconsin law as soon as possible." A license was issued to it pursuant to the statute,
177 and it was renewed or continued in force until January 1, 1894.

2. In view of the action of the defendant, through its board of directors, and the fact that it is conceded that the securities of the kind and character mentioned were held by the State treasurer of Wisconsin when the action was commenced to the amount of $145,234, we must conclude and hold that the mortgages in dispute were deposited with the State treasurer by the defendant corporation or by its authority in a *bona fide* attempt "to comply with the Wisconsin law," as it had already resolved to do, and had made the State treasurer of that State its depository for that purpose. The Wisconsin law required the deposit of securities under the act to be made with the State treasurer. The defendant corporation obtained

the prescribed license. It was required and it was its duty to deposit the securities mentioned to the amount of $100,000. This, it would seem, had been agreed should be done, and upon the facts disclosed by the record we think that it is a reasonable presumption that what was agreed to be done was done in the manner and for the purposes prescribed by the act. In Sparks *v.* National Masonic Accident Association, 69 N. W. Rep., 678, it was held that when a foreign insurance company is shown to have transacted business in a State where by the statute certain acts were to be done by that company before it had a right to transact business therein a conclusive presumption arises that the company has complied with the law in that respect. It is alleged in the counter-claim, in substance, that the provisions of the Minnesota statute were not complied with by the corporation defendant in making the deposits with the State treasurer of Wisconsin. The State authorities of Wisconsin in receiving these securities, as provided by the statute, were not bound to investigate the question of local administration or compliance with the law of Minnesota by the corporation
178 and State authorities. The allegations that the possession of the securities by the State treasurer was wrongful, and that they were delivered to him by officers and employés of the corporation without lawful authority, are legal conclusions. It was enough that the securities were, as it is conceded, the property of the corporation, and that its directors, who deposited them for the purpose indicated, had power "to enter into such contracts and agreements as they might deem for the best interests of its affairs," and that the directors in the exercise of their discretion desired to obtain a license to prosecute and carry on the business of the corporation in Wisconsin in order to realize the profits and advantages consequent upon such extension of its business, which, it appears, has been extended to 34 States. Heath *v.* Silverthorn Lead Mining Co., 39 Wis., 146.

3. It was within the power of the directors to determine upon and make the intended extension of the business of the corporation, and it was their duty and within their power as well to make the necessary deposit of its securities as required by the Wisconsin law, which was a condition precedent to the right of the corporation to obtain the desired license and transact its business in Wisconsin. In any view that may be taken of the case we think that the transaction was within the undoubted power of the corporation. The deposit was made accordingly, the license was issued, the defendant entered the State and carried on its business therein, and for a period of five years derived the benefits and advantages expected to result from such extension of its business and the protection and authority of the State. It was well understood by the corporation, its directors, officers, and members, that these securities had been deposited, and had so remained with the State treasurer under the pledge specified in the Wisconsin statute, and until financial dis-
179 aster and insolvency overtook the corporation. It could enter the State of Wisconsin and carry on its business only on complying with the terms and conditions of the Wisconsin

statute. Having the right to extend its business, it seems clear that it was not *ultra vires* the corporation to comply with the conditions upon which alone it could lawfully obtain a license to so enter the State and carry on its business, the prosecution of which was for the common advantage and profit of the corporation and of all its members and shareholders.

4. It is familiar law that the recognition of the existence of a corporation by any other than the State of its creation and the enforcement of its contracts made therein depend purely upon the comity of such other State or States: "A comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy." "Having no right of recognition in other States, but depending for such recognition and enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely that may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interests." "The whole matter rests in their discretion." This was so held by the Supreme Court of the United States nearly thirty years ago in Paul *v.* Virginia, 8 Wall., 168, 181; affirmed in that court by many subsequent cases, and as well by other courts of the highest respectability and authority. Hooper *v.* California, 155 U. S., 648, and cases cited; Relf *v.* Rundel, 103 U. S., 222, 225; Ins. Co. *v.* Raymond, 70 Mich., 485; Morse *v.* Home Ins. Co., 30 Wis., 496; State *ex rel.* Drake *v.* Doyle, 40 Wis., 175, 197; State *v.* Root, 83 Wis., 667, 680; Wyman *v.* Kimberly-Clark Co., 93 Wis., 554. In Hooper *v.* California, *supra*, the cases in the Supreme Court of the United States on the subject are collected and cited, and it was there stated that "the principle that the right of a foreign corporation to engage in business within a State other than that of its creation depends solely upon the will of such other State has been long settled, and many phases of its application have been illustrated by the decisions of this court. Whilst there are exceptions to this rule, they embrace only cases where a corporation created by one State rests its right to enter another and to engage in business therein upon the Federal nature of its business, as, for instance, where it has derived its being from an act of Congress and has become a lawful agency for the performance of governmental or quasi-governmental functions, or where it is necessarily an instrumentality of interstate commerce, or its business constitutes such commerce, and is, therefore, solely within the paramount authority of Congress. In these cases the exceptional business is protected against interference by State authority." In the case cited the court said: "The State of California has the power to exclude foreign insurance companies altogether from her territory, whether they were formed for the purpose of doing a fire or a marine business. She has the power, if she allows any such companies to enter her confines, to determine the conditions on which

180

the entry shall be made, and as a necessary consequence of her possession of these powers she has the right to enforce any conditions imposed by her laws as preliminary to the transaction of business within her confines by a foreign corporation, whether the business is to be carried on through officers or through ordinary agents of the company, and she has also the further right to prohibit a citizen from contracting within her jurisdiction with any foreign company which has not acquired the privilege of engaging in business therein, either in his own be-
181 half or through an agent empowered to that end. The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory of the State which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent, subject always, of course, to the paramount authority of the Constitution of the United States." The doctrine thus established is, in our judgment, conclusive as to the validity of the pledge of the securities here in question, under the Wisconsin statute, and of the trusts therein specified. The defendant association clearly had the power to make the deposit as incident to the accomplishment of the purpose for which it was created. In North Hudson Mutual Building and Loan Association *v.* First National Bank, 79 Wis., 31, 36, this court held that a building and loan association might lawfully do those things reasonably necessary in order to accomplish the objects and purposes of its organization which were not expressly forbidden. In general, in exercising the powers conferred by its charter, a corporation may adopt any proper and convenient means tending directly to their accomplishment, and not amounting to the transaction of a separate unauthorized business. Clark *v.* Farrington, 11 Wis., 306; State *v.* Regents, etc., 54 Wis., 159; Madison Plank Road Co. *v.* Watertown Plank Road Co., 5 Wis., 173. The association defendant had not been forbidden to make the deposit of its securities taken in the course of its business to enable it to enter the State of Wisconsin or any other State and obtain a license to transact its business therein. It was the absolute owner of these securities, and it might lawfully so use them. It was required by the statute that "if any securities on deposit as provided by this act are wholly or partially extinguished by payment of the same or otherwise, or such secu-
182 rities depreciate in value for any cause, new securities must be added, so that the deposit may at all times be kept good and of the value of $100,000." The association defendant by accepting its license was bound to comply with the law, and in the absence of any allegations to the contrary it must be presumed that all mortgages deposited at or after the date of the license, May 10, 1889, were deposited for the purpose of complying with the law and keeping its deposit up to the required amount of $100,000. The subsequent amendment to the articles of incorporation, July 11, providing that "The board of directors shall not sell or dispose of any of the mortgages held or owned by the corporation," is relied on, but this provision must be construed, we think, in connection with the

statute of Minnesota, which, as already noticed, quite clearly contemplated that the securities of the association might be used and pledged, if need be, for the purpose of complying with the law under which it could enter to transact business in another State. It was not intended by this amendment to deprive the corporation of the power, by the use of its securities, to maintain and keep good its deposits in order to transact its business in the 34 States which it appears to have entered for that purpose. The more reasonable view would seem to be that the amendment was intended to prevent an absolute sale or traffic in its securities, and not a deposit of such securities for the purpose indicated. We arrive, therefore, at the conclusion that the deposit of securities in question made with the State treasurer for the purpose indicated was within the lawful power of the corporation as represented by its directors, and that the action of the directors in making it was binding upon the corporation and all its members to the extent and according to the terms of the statute under which it was made.

5. The deposit was, as we have said, within the power conferred upon the corporation and not in violation of the trust reposed
183 in the board of directors, that the affairs of the corporation should be managed and its property and funds applied solely for the purpose of carrying out the objects for which the corporation was created. It is well settled that a corporation cannot avail itself of the defence of *ultra vires* when the contract in question has been in good faith fully performed by the other party and the corporation has had the full benefit of the performance and of the contract. Much less will the claim that the transaction was *ultra vires* be allowed as a ground for rescinding the contract and restoring to the complaining party on that ground the property or funds with which he has parted, after he has had the benefit of full performance of the contract by the other party; and in general the plea of *ultra vires* will not be allowed to prevail, whether interposed for or against a corporation, when it will not advance justice, but, on the contrary, will accomplish a legal wrong. Kadish *v.* Loan and Building Association, 151 Ill., 531; Whitney Arms Co. *v.* Barlow, 63 N. Y., 62; National Bank *v.* Matthews, 98 U. S., 628, 629. "Where it is a simple question of capacity or authority to contract, arising either on a question of regularity of organization or of power conferred by the charter, a party who has had the benefit of the agreement cannot be permitted, in an action founded on it, to question its validity. It would be in the highest degree inequitable and unjust to permit the defendant to repudiate a contract the fruits of which he retains." Sedgwick Stat. and Const. Constr., sec. 73. In 2 Beach Priv. Corp., sec. 425, the subject is fully considered, and numerous modern authorities are cited showing that "where a contract has been in good faith fully performed, either by the corporation or the other party, the one who has received the benefit of it will not be permitted to resist its enforcement by the plea of a mere want of power." Darst *v.* Gale, 83 Ill., 136;
Savings Bank *v.* Elevator Co., 90 Mich., 550; The Holmes &
184 Griggs Co. *v.* Metal Co., 127 N. Y., 260; Rider Life Raft Co *v.* Roach, 97 N. Y., 378; Bradley *v.* Ballard, 55 Ill., 415; State.

Board *v.* R'y Co., 47 Ind., 407; Oil Creek R. R. Co. *v.* Pennsylvania R. R. Co., 83 Pa. St., 160, 166. The result of these views is that the receiver appointed by the circuit court for Dane county, Wisconsin, is entitled to retain the securities in question and to subject them under the order of the court to the fulfillment of the trust upon which they were so deposited, and to that end they may be sold or collected and the proceeds so applied, and any residue that may remain must be turned over to the appellant, the receiver appointed by the district court of Hennepin county, Minnesota. The corporation defendant, as well as its stockholders and its receiver appointed by the court in Minnesota, are estopped from disputing the validity of the trust upon which the State treasurer had received these securities and held them when the corporation became insolvent and this action was commenced. The corporation by its directors consented to and made the deposit, and their action became binding alike on members and stockholders in other States, and they have thus waived all right on legal or constitutional grounds to question the validity of the trust on which the securities are held as expressed in the statute.

6. We cannot perceive how it can be maintained that the contract clause of the Federal Constitution can be invoked to release these securities from the operation and effect of such pledge and estoppel, whatever view may be taken of the rights and relations of the entire body of stockholders as between themselves and the corporation. They have waived their right to insist upon the constitutional objection they urge against the Wisconsin statute or to question the validity of the trust. Whatever modification or change may have occurred in the contractual relations existing between these parties is the sole result of their lawful and proper consent or of
185 those who were chosen and fully empowered in law to represent them, namely, the board of directors, without whose authority the securities could not have been deposited or pledged under the statute. The right to invoke the contract provision of the Federal Constitution, we think, has been waived by them, and the case on this point falls strictly within the principle stated by Judge Cooley in his celebrated work on Constitutional Limitations, 214, where he states that "there are cases where a law in its application to a particular case must be sustained, because the party who makes objection has, by prior action, precluded himself from being heard against it. Where a constitutional provision is designed for the protection solely of the property rights of the citizen, it is competent for him to waive the protection and to consent to such action as would be invalid if taken against his will." And several instances of the application of this principle are given. The learned author states: "In these and the like cases the statute must be read with an implied proviso that the party to be affected shall assent thereto, and such consent removes all obstacle and lets the statute in to operate the same as if it had in terms contained the condition." There are many well-considered cases sustaining the position that a party may by his own act or conduct preclude himself from insisting upon constitutional objections to a statute affect-

ing his rights. The subject is discussed by Paine, J., in Burrows *v.* Bashford, 22 Wis., 104, where the opinion is expressed that it is not unconstitutional for the legislature to provide that a party may voluntarily subject himself to unconstitutional provisions as a condition to the enjoyment of a new advantage given by the act. So in the present case, in consideration of the benefits derived by the defendant corporation and its shareholders from the statute under consideration, in being allowed to enter the State and transact business therein, they must be precluded from insisting upon the
186 invalidity of the statute. Bank of Columbia *v.* Okely, 4 Wheat., 235; People *v.* Murray, 5 Hill, 468. A party may renounce a constitutional provision made for his benefit. Embury *v.* Connor, 3 N. Y., 511; Lee *v.* Tillotson, 24 Wend., 337. And having waived it, cannot subsequently ask for its protection. The views we have already expressed render the contention of the appellant in respect to the relations which the shareholders of a mutual building association ordinarily sustain to the corporation and to each other inapplicable, as well as the contention that the enforcement of the trust specified in the statute in these securities will destroy equality of right between the shareholders in general, rendering, as it is contended, the Wisconsin shareholders preferred shareholders.

7. Whatever the practical result of the enforcement of the trust in favor of Wisconsin shareholders, creditors, and others sustaining contractual relations with the corporation defendant may be, it rests, as we think and as we hold, upon the consent of the corporation and of its shareholders lawfully given, as it well might be in the present case, by and through its board of directors, for a valid consideration received by the corporation to the benefit and advantage of those now denying its validity. The right of the State of Wisconsin to pass and enforce the act for the better protection of its citizens and residents against irresponsible foreign corporations entering or desiring to enter the State and transact business therein with its citizens cannot, we think, be denied. We cannot assent to the position that the security afforded by the deposit required by the act and thus consented to and made by the corporation, through its directors, may be avoided or nullified at the instant when the necessity for retaining and enforcing it becomes imperative. If it was lawful to require and take the security, it is rightful and lawful to insist on it and enforce it according to the very terms and true meaning of the
187 act under which it was given. And insolvency of the corporation will not release the trust or discharge it. The language of the Wisconsin statute is free from doubt or ambiguity, and construction has no office to perform in respect to it. Its meaning and purpose is obvious, and it is the manifest duty of the court to give it full effect. This cannot be done without strictly applying the securities or their proceeds to the uses prescribed by the statute. This trust was not created for the benefit or indemnity of members, creditors, and shareholders of the defendant corporation generally, residing out of the State. These were not within its plan, purpose,

or policy. The deposit was required and made in pursuance of a wise State policy, solely for the benefit and indemnity of resident shareholders and creditors, and for their protection and advantage only. Language could not have been readily employed to have made the intention plainer than is expressed in the statute. To now turn these securities over to the appellant to the end that they may be collected and converted and the proceeds applied ratably in satisfaction of all the claims of shareholders and creditors generally, whether residents of Wisconsin or not, would, we think, be a manifest perversion of the trust and render the security and indemnity they were deposited to furnish resident shareholders and others indicated in the statute a mere delusion. We think that the demurrers to the appellant's answer and counter-claim were properly sustained.

By the COURT: The orders appealed from are affirmed.

188 In Supreme Court of the State of Wisconsin.

L. V. LEWIS, Plaintiff and Respondent,

vs.

AMERICAN SAVINGS & LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building & Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants and Respondents; William D. Hale, as Receiver of the American Savings & Loan Association, Appointed by the District Court of Hennepin County, State of Minnesota, Defendant and Appellant.

We consent that Erdall & Swansen, attorneys-at-law at Madison, Wisconsin, be substituted in this action in the place of Lewis, Briggs & Dudgeon, as attorneys for M. C. Clarke, receiver herein, and said L. V. Lewis, plaintiff and respondent.

Dated this 22d day of October, 1898.

M. C. CLARKE,
Receiver of the American Savings & Loan Association for the State of Wisconsin.

LEWIS, BRIGGS & DUDGEON,
Formerly Attorneys for said L. V. Lewis and said M. C. Clarke, Receiver of the American Savings & Loan Association.

189 In Supreme Court of the State of Wisconsin.

L. V. LEWIS, Plaintiff and Respondent,
vs.
AMERICAN SAVINGS & LOAN ASSOCIATION, Formerly Doing Business under the Name of the American Building & Loan Association, and S. A. Peterson, as Treasurer of the State of Wisconsin, Defendants & Respondents; William D. Hale, as Receiver of the American Savings & Loan Association, Appointed by the District Court of Hennepin County, State of Minnesota, Defendant and Appellant.

Upon reading and filing the annexed consent of M. C. Clarke, as receiver of said association, and Lewis, Briggs & Dudgeon, the attorneys of said L. V. Lewis, plaintiff and respondent, and said M. C. Clarke, receiver aforesaid, that Erdall & Swansen, of the city of Madison, State of Wisconsin, be substituted in place of said Lewis, Briggs & Dudgeon as attorneys for said L. V. Lewis and said M. C. Clarke, as receiver aforesaid, in this action:

Ordered that the substitution be, and it is hereby, made accordingly.

By the court:

[Seal Supreme Court of Wisconsin.]

CLARENCE KELLOGG, *Clerk.*

Dated this 22nd day of October, 1898.

190 WILLIAM D. HALE, as Receiver of the American Savings and Loan Association, Appointed by the District Court of Hennepin County, Minnesota, Plaintiff in Error,
vs.
L. V. LEWIS, S. A. PETERSON, Treasurer of the State of Wisconsin, and M. C. Clarke, Receiver of the American Savings and Loan Association, Appointed by the Circuit Court of Dane County, Wisconsin, Defendants in Error.

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office, with all things concerning the same, in the above-entitled cause.

That the original writ of error, the petition therefor, the citation, with its service endorsed thereon; the assignment of errors, and a copy of the bond are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error hereto annexed.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 31st day of October, 1899.

[Seal Supreme Court of Wisconsin.]

CLARENCE KELLOGG,
Clerk of Supreme Court Wisconsin.

Endorsed on cover: File No., 17,552. Wisconsin supreme court. Term No., 151. William D. Hale, as receiver of the American Savings & Loan Association, appointed by the district court of Hennepin county, Minnesota, plaintiff in error, *vs.* L. V. Lewis, The Treasurer of the State of Wisconsin, and M. C. Clarke, receiver of the American Savings & Loan Association, appointed by the circuit court of Dane county, Wisconsin. Filed November 3rd, 1899.

No. 181.

FILED
NOV 30 1900

Eug. Hay for P. C.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 181.

Filed Nov. 30, 1900.

WILLIAM D. HALE, AS RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE DISTRICT COURT OF HENNEPIN COUNTY, MINNESOTA, PLAINTIFF IN ERROR,

vs.

L. V. LEWIS, THE TREASURER OF THE STATE OF WISCONSIN, AND M. C. CLARKE, RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE CIRCUIT COURT OF DANE COUNTY, WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

BRIEF AND ARGUMENT
FOR PLAINTIFF IN ERROR.

EUGENE G. HAY,
CHARLES E. VAN CAMPEN,
Attorneys for Plaintiff in Error.

1825

Supreme Court of the United States,

OCTOBER TERM, 1900.

No. 151.

WILLIAM D. HALE, AS RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE DISTRICT COURT OF HENNEPIN COUNTY, MINNESOTA, PLAINTIFF IN ERROR,

vs.

L. V. LEWIS, THE TREASURER OF THE STATE OF WISCONSIN, AND M. C. CLARKE, RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE CIRCUIT COURT OF DANE COUNTY, WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

BRIEF AND ARGUMENT

FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

(*References are to pages of the printed Record.*)

This case is in this Court upon a Writ of Error to the Supreme Court of the State of Wisconsin, to correct the error of that Court, in rendering final judgment of dismissal in the action, which was originally commenced in the Circuit Court for Dane County, Wisconsin, and appealed to the Supreme Court of that State, which is the highest Court of that State in which judgment in said action could be rendered.

Two questions are presented; one is jurisdictional, the other goes to the merits.

The first is: Is there a Federal question involved, or is the decision of the Supreme Court of Wisconsin based upon a question not Federal and sufficient to sustain the judgment?

The second is: Is the statute of the State of Wisconsin, upon which the judgment is founded, repugnant to the Constitution of the United States?

STATEMENT OF FACTS.

The undisputed facts of the case are all stated in the answer and counter-claim of the plaintiff in error, which is contained on pages 32 to 43 inclusive of the printed record and the exhibits thereto, which are contained on pages 43 to 115 inclusive of the printed record.

So far as they are important to the decision of the question presented to this Court, they are as follows: The American Build-

ing & Loan Association was a mutual building association organized under the laws of the State of Minnesota (Record pages 32, 33), with its principal place of business at Minneapolis, Minnesota, but with stockholders residing in 35 different states, in all of which it transacted business. (Record page 40.)

The corporation was originally incorporated on the 15th day of April, 1887, as the American Building & Loan Association, but its name was afterwards, to-wit, on the 26th day of June, 1892, duly changed to the American Savings & Loan Association, without in any way affecting or altering its corporate rights. (Record page 33.) Its business from the time of its organization, up to the 14th day of January, 1896, was that of a mutual building association, it having no other business. (Record page 33.) The management of the corporation was vested, by the articles of incorporation, in a Board of Directors, whose duties and powers were prescribed and limited by the articles of incorporation and the by-laws. (Record pages 43 to 91.)

On the 19th day of April, 1889, the statute of the State of Wisconsin here drawn in question, was approved and became a law. It is Section 2014 A, Sanford & Berryman's Statutes of Wisconsin, and reads as follows:

"§2041 A. No foreign building and loan association * * * shall issue its shares, receive moneys, or transact any business in this State, unless such association shall have and keep on deposit with the State Treasurer of Wisconsin, in trust for the benefit and security of all its members in this State, the securities of the actual cash value of $100,000 of the kind mentioned in section 2 of this act, to be approved and accepted by said State Treasurer, and held in trust as aforesaid, until all shares of such association held by residents of this State shall have been fully redeemed and paid off by such association, and until its contracts and obligations to persons and members residing in this State shall have been fully performed and discharged."

At the time of the enactment of this law, this association had 162 shareholders in the State of Wisconsin who had theretofore

become such. Thereafter, and prior to the appointment of the plaintiff in error as receiver of said association, 84 additional residents of the State of Wisconsin became shareholders in said association. (Record page 39.)

The contract by which each of these Wisconsin shareholders became such, was identical with that by which all of the shareholders in the 34 other States became shareholders in this association, and the rights, privileges, immunities and liabilities of every shareholder, whether residing in Wisconsin or any other state, were the same. Under the articles of incorporation of the association, none of the shareholders could have, and under the contracts by which they became shareholders, none did have, higher, superior or different rights, privileges or immunities than those had or enjoyed by all. The essence of these contracts was to share equally the profits and bear equally the losses of the common enterprise. (Record page 40.)

On the 31st day of July, 1888, the association amended its articles of incorporation by adding thereto the following:

"The board of directors may sell and dispose of the mortgages held by the corporation whenever they may deem best and as provided by the by-laws."

There was not at that time nor at any time thereafter, any provision in the by-laws for selling or disposing of the mortgages of the association. (Record page 33.) On the 11th day of July, 1889, the association again amended its articles of incorporation by inserting therein the following:

"The board of directors shall not sell or dispose of any of the mortgages held or owned by this corporation." (Record page 34.)

On the 1st day of May, 1889, the board of directors of this association adopted the following resolution: "Resolved, That the

State Treasurer of Wisconsin be made a depository of the association for temporary convenience in complying with the laws of Wisconsin in regard to the deposit of securities, $100,000." (Record page 39.) Thereafter, from time to time without other or additional authority, mortgages taken by the building association from its members to secure loans or advancements, were delivered by the officers of said association to the State Treasurer of Wisconsin, which said mortgages at the time of the appointment of the plaintiff in error as receiver, were of the aggregate face value of $145,-234.00 and were of the same value at the time of the filing of the complaint herein. (Record page 37.)

The shareholders of said association had no knowledge whatever of the delivery of said mortgages to said State Treasurer, nor did they at any time consent thereto or acquiesce therein. (Record page 39.)

Upon the 14th day of January, 1896, the American Savings & Loan Association, having become insolvent and unable to return to its shareholders dollar for dollar of the amount which they had paid in, or to effectuate the purposes of its creation, the plaintiff in error was duly appointed receiver therefor by the District Court of Hennepin County, Minnesota, under the provisions of Chapter 76 of the Statutes of Minnesota of 1878, being sections 5900, 5901, 5902 of the Statutes of Minnesota of 1894. (Record pages 40 and 41.)

By the order appointing said receiver, said Court authorized and required him to take charge of all the property and effects of said association; to collect, sue for and recover all the debts and demands that were due said association, and to manage and administer all of the affairs of said association under the direction of said Court. (Record page 41.) Said receiver duly qualified and promptly proceeded, under the orders of the Court, to collect the assets of said association, wheresoever the same should be found, for the purpose of reducing them to possession and distributing

them equitably among all shareholders of said association wheresoever the same should reside. (Record page 42.)

Subsequent to the appointment of the plaintiff in error as receiver as aforesaid, to-wit, on the 5th day of February, 1896, one M. C. Clarke was, by the Circuit Court of Dane County, Wisconsin, appointed receiver for said association for the State of Wisconsin, and in said proceedings the State Treasurer of Wisconsin, who was a party thereto, was by said Court, ordered and directed to turn over all of said mortgages in the possession of said State Treasurer, as heretofore stated, to said Clarke, so appointed as receiver. (Record pages 24, 25 and 26.) That pursuant to said order, said State Treasurer turned over and delivered all of said mortgages to said Clarke, and said Clarke was at the time of the filing of the answer and counter-claim of this plaintiff in error, proceeding to collect the same with the purpose of distributing the proceeds to the shareholders residing in the State of Wisconsin. (Record page 42.)

The association had no creditors, except its shareholders, and owed no debts in the State of Wisconsin, except to it shareholders for the moneys paid in by them upon their stock.

The assets of said association, including the mortgages in the possession of said Clarke, as receiver in Wisconsin, are not sufficient to pay to all of the shareholders of said association dollar for dollar of the amount which they have paid in, or any other or greater sum than 40 per cent thereof. (Record page 42.) The mortgages in the hands of said Clarke are sufficient, when collected, to pay to the shareholders residing in Wisconsin, dollar for dollar of the amount of which they have paid in to said association. (Record page 42.)

This plaintiff in error was duly made a party to this action, and filed his answer and counter-claim, which set out fully all of the facts. To this answer and counter-claim demurrers were filed by the plaintiff, by the State Treasurer and by Clarke, receiver. These

demurrers were sustained by the Circuit Court, and from the order sustaining them, an appeal was taken to the Supreme Court of the State. The Supreme Court affirmed the order of the Circuit Court and the case was remanded for further proceedings. This plaintiff in error refused to amend his answer and counter-claim, and elected to stand on the record theretofore made. A judgment was rendered against the plaintiff in error that he take nothing by the action and for costs and disbursements in the sum of $60.03. From this judgment an appeal was taken to the Supreme Court of Wisconsin, which said Court affirmed said judgment. To correct the error of that Court in affirming said judgment, which was in effect a judgment of dismissal as to the plaintiff in error, and hence final, this case is here upon a writ of error. (Record pages 129 and 135.)

ASSIGNMENTS AND SPECIFICATIONS OF ERROR.

The said plaintiff in error comes and says, that in the record and proceedings in this suit in said Supreme Court of the State of Wisconsin, there is manifest error in this, that the Act of the Legislature of the State of Wisconsin, entitled "An Act Regulating Building and Loan Associations," being Chapter 525 of the Laws of Wisconsin for the year 1889, and Section 2014 A, Sanford and Berryman's Statute, as the same is construed and enforced by said Court in said suit, impairs the obligation of the contracts of the shareholders in the American Savings & Loan Association, and that under and by said decision and said statute, privileges and immunities are granted to the citizens of Wisconsin which are denied to citizens of other states.

For further specifications of error to be relied upon, we present the following:

I. That said Court held the Statute of Wisconsin entitled "An Act Regulating Building and Loan Associations," being chap-

ter 525 of the Laws of Wisconsin for the year 1889, approved the 19th day of April, 1889, in so far as said law authorized the securities deposited under its provisions with the State Treasurer of Wisconsin by a foreign building association, when said association becomes insolvent, to be distributed to the shareholders of said association, who are residents in and citizens of Wisconsin, until their claims arising out of their stock in said association are paid in full before shareholders in said association, who are residents in and citizens of other states, can be paid anything out of said securities upon their claims arising out of their stock in said association, to be valid and not in conflict with the provisions of the Constitution of the United States, whereas the said act is invalid and contrary to the provisions of the Constitution of the United States on each of the following grounds:

First. That in so authorizing such distribution of said securities, said act is contrary to section 2 of article 4 of the Constitution of the United States, in that, it thereby grants privileges and immunities to the citizens of Wisconsin, who are shareholders in said foreign building association, which are denied to the citizens of the several States, other than the State of Wisconsin, who are shareholders in said association.

Second. That in authorizing such distribution of said securities, said act is contrary to the provisions of section 10 of article 1 of the Constitution of the United States, in that, it impairs the obligation of a contract, in this, that it impairs the obligation of the contracts of membership entered into by each of the shareholders of said foreign building association at the time they became members of and shareholders in said association.

Third. That in authorizing such distribution of said securities, said act is contrary to the provisions of section 10 of article 1 of the Constitution of the United States, in that, it impairs the obligation of a contract in this, that it impairs the obligation of the contracts of 162 shareholders in said association residing in and

citizens of the State of Wisconsin who were such shareholders befor the passage of said act, in that it gives to them larger rights and interests than they acquired under their contracts of membership when they became members of and shareholders in said association.

II. Said Court held that the securities deposited with the State Treasurer of Wisconsin by the officers of the American Savings & Loan Association should, under the provisions of a certain statute of Wisconsin entitled "An Act Regulating Building and Loan Associations," being chapter 525 of the Laws of Wisconsin for the year 1889, approved the 19th day of April, 1889, when said association became insolvent, be distributed to the shareholders in said association residing in and who are citizens of the State of Wisconsin, until they should receive dollar for dollar of the amount paid in upon their stock in said association before anything should be paid out of said securities to the shareholders in said association residing in and citizens of other States, when said shareholders residing in and citizens of other States could receive out of the remaining assets of said association a sum not to exceed 40 cents upon the dollar of the amount which they had paid in upon their stock in said association. In this the said Court erred for the reason that said law is void and in conflict with section 2 of article 4 of the Constitution of the United States, in that it grants privileges and immunities to the citizens of Wisconsin which are denied to citizens of other States, and in conflict with section 10 of article 1 of the Constitution of the United States, in that it impairs the obligation of a contract.

III. The said Court held that under and pursuant to the provisions of a certain statute of Wisconsin entitled "An Act Regulating Building and Loan Associations," being chapter 525 of the Laws of Wisconsin for the year 1889, approved the 19th day of April 1889, shareholders residing in and who are citizens of Wis-

consin are entitled to priority in payment out of the securities of the American Savings & Loan Association theretofore deposited with the State Treasurer of Wisconsin, of their claims arising out of their stock in said association, when said association became insolvent. In this the said Court erred for the reason that said law is void and in conflict with section 2 of article 4 of the Constitution of the United States, in that, it grants privileges and immunities to citizens of Wisconsin which are by it denied to the citizens of other States, and is in conflict with section 10 of article 1 of the Constitution of the United States, in this, that it impairs the obligation of the contracts entered into between the American Savings & Loan Association and the 162 shareholders of said association residing in and citizens of Wisconsin who became such shareholders prior to the passage of said law, and impairs the obligation of the contracts entered into by said association with all the shareholders thereof in whatsoever State residing, and impairs the obligation of the contracts entered into by all the shareholders of said association with each other upon becoming shareholders in said association, and impairs the obligation of the contracts entered into between the shareholders of said association and the State of Minnesota.

IV. As a result of said decision, 162 shareholders, residing in and citizens of the State of Wisconsin, who were such shareholders at the time of the passage of a certain statute of the State of Wisconsin entitled "An Act Regulating Building and Loan Associations," being chapter 525 of the Laws of Wisconsin for the year 1889, approved the 19th day of April, 1889, will, by virtue of the provisions of said law, receive out of the assets of the insolvent American Savings & Loan Association dollar for dollar of the amount which they paid for their stock in said association, whereas the shareholders of said association residing in and citizens of other States will not receive to exceed 40 cents upon the dollar of the amounts paid by them for their stock in said association;

that the said Court erred in not holding that the said law was void and in conflict with section 2 of article 4 of the Constitution of the United States, in that it grants privileges and immunities to the citizens of Wisconsin not granted to citizens of other States, and in conflict with section 10 of article 1 of the Constitution of the United States, in that it impairs the obligation of the contracts of said 162 shareholders residing in and citizens of Wisconsin, and of the contracts of all the other shareholders residing in and citizens of Wisconsin, and of the contracts of all the other shareholders in said association, and the contracts made with all of said shareholders in said association by the State of Minnesota in granting to said association its charter.

V. In deciding said case said Court gave effect to a certain statute of Wisconsin entitled "An Act Regulating Building and Loan Associations," being chapter 525 of the Laws of Wisconsin for the year 1889, approved the 19th day of April, 1889. In this the said Court erred for the reason that said law, in so far as the same is applicable to the facts of this case, is void and in conflict with section 2 of article 4 of the Constitution of the United States, in that it grants privileges and immunities to the citizens of Wisconsin not granted to citizens of other States, and in conflict with section 10 of article 1 of the Constitution of the United States, in that it impairs the obligation of the contracts of the shareholders of the American Savings & Loan Association, entered into by them with said association, with each other, and with the State of Minnesota when they became members of and shareholders in said association.

Wherefore the said plaintiff in error prays that said judgment of the Supreme Court of the State of Wisconsin be reversed and annulled, and that said plaintiff in error may be restored to all things which he has lost by reason of said judgment, and that said judgment be rendered in favor of said plaintiff in error and against said defendant in error.

ARGUMENT.

I.

THE QUESTION OF JURISDICTION.

The American Savings & Loan Association was a mutual building association, having no creditors except its shareholders or stockholders, who upon the insolvency of the corporation became creditors in the amount which they had paid into the association upon their stock. The plaintiff in error, as receiver of this association, represents in this action, these stockholders as such creditors.

Minnesota Thresher Manufacturing Co. vs. Langdon, 44 Minn. 37.

In deciding this case, the Supreme Court of Wisconsin held, that the proceeds of the mortgages which were on deposit with the State Treasurer of Wisconsin at the time the American Savings & Loan Association became insolvent, should be used for the payment of the sums paid upon their stock by the shareholders of the association who resided in and were citizens of Wisconsin until they had been paid in full, to the exclusion of the shareholders of the association who resided in and were citizens of other States. These mortgages were deposited by the officers of this association in an attempt to comply with the provisions of a statute of the State of Wisconsin entitled "An Act Regulating Building and Loan Associations," being chapter 525 of the Laws of Wisconsin for the year 1889, and in deciding this case as it did, the Supreme

Court of Wisconsin gave force and effect to this law. Except for the passage of this law, these mortgages would not have been in the possession of the State Treasurer of Wisconsin, and even if they had been, could not have been given to the Wisconsin shareholders to the exclusion of shareholders in other States. It was only by applying the provisions of this law, that the Court's decision could be made. The judgment of the Court is therefore founded upon this statute. This is also made clear from the opening sentence of the Court's opinion, which is: "The principal question presented by these appeals, is as to the construction, validity and effect of the Law of Wisconsin requiring foreign mutual building associations to make a deposit."

This law was approved and went into force on the 19th day of April, 1889. Of the 246 shareholders, to whom, by the Court's judgment, the proceeds of the mortgages deposited with the State Treasurer, are to be paid, 162 were shareholders in said association prior to the passage of said law. (Record page 39.)

This law, therefore, as construed by the Supreme Court of Wisconsin, gives to the shareholders of this association who reside in Wisconsin, a preferential interest in these mortgages, and makes of them, under the facts of this case, preferred shareholders. The contract which these shareholders entered into, was to share equally with the shareholders of all other States, the profits and bear equally with them the losses, which the association might realize or sustain. Prior to the passage of this law, had the association failed, the Wisconsin shareholders could not have received any larger proportion of the assets than was received by the shareholders residing in other States. This was the essence of the contract which all the shareholders upon becoming such entered into with each other, with the corporation, and with the State of Minnesota, which granted the charter. The effect of this law, therefore, as construed and enforced by the highest Court of the State, is to impair the obligation of all of these contracts.

The decision of that Court is a final judgment rendered in the highest Court of the State, and as seen by the above statement, in that decision was drawn in question the validity of a statute of the State, upon the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity. Thus far it seems clear that there is a Federal question involved in the decision. If we are right in this conclusion, we entirely misunderstand the decisions of this Court, if the rights of those represented by the plaintiff in error to have that decision reviewed, can be defeated by any language which the Court may use in the opinion that it files at the time it makes the decision by which the judgment is directed.

It will be urged, that, in its opinion, the Court based its decision upon an independent ground and did not pass upon the validity of the statute; hence, no Federal question is involved. It is true, that the Court, in its opinion, says that these shareholders have waived their right to insist upon the constitutional objection which they urge against the Wisconsin Statute, and that whatever modification may have occurred in the contractual relation existing between them, is the sole result of their lawful and proper consent, and it will doubtless be urged that this mere statement of the Supreme Court of Wisconsin deprives this Court of jurisdiction to review its decision. We do not understand such to be the rule laid down by this Court, but on the contrary, that this Court has reserved to itself the right and power to determine in each particular case, not from the language used by the State Court in its opinion, but from the decision which it renders, whether or not there is a Federal question involved.

It is well settled, that this Court has not jurisdiction of a writ of error to a State Court, where the record discloses that a Federal question has been raised and decided adversely to the party claiming the benefit of the Constitution of the United States, but another question, not Federal, was also raised and decided against

such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment. In other words, the judgment of the State Court must rest upon the decision of some Federal question before this Court acquires jurisdiction. But this is to be determined by the substance and effect of the judgment and not the mere language of the Court in the opinion in which the decision is rendered. As was aptly said by this Court in the case of *McCullough vs. Virginia, 172 U. S. 102.*

"Could it be said that the silence of the State Court in its opinion changed the scope and effect of the decision? In other words, can it be that the mere language in which the State Court phrases its opinion takes from or adds to the jurisdiction of this Court to review its judgment? Such a construction would always place it in the power of a State Court to determine our jurisdiction. Such, certainly, has not been the understanding, and such certainly would seem to set at naught the purpose of the Federal Constitution to prevent a State from nullifying by its legislation a contract which it has made or authorized to be made."

This Court has held in a number of cases, as in *Eustis vs. Bolles, 150 U. S. 361*, that the decision of a State Court, that a litigant has waived his right to object to the validity of a statute, presents no Federal question. But we do not understand that it has been laid down as a broad and settled doctrine, that whenever a State Court in its opinion says that a party claiming a statute of the State to be repugnant to the Constitution of the United States has waived the right to urge the invalidity of this statute, that that mere statement deprives this Court of jurisdiction. A proposition so broad as this, would be to effectually destroy the jurisdiction of this Court to review the decisions of a State Court whenever that State Court saw fit to destroy it. As we understand it, this Court has uniformly determined the question of jurisdiction upon the decision of the State Court and not the opinion which that Court expressed. Any other view might, and in many cases doubtless would, effectually destroy the litigant's right to the re-

view of a Federal question by the Supreme Court of the United States. For illustration: If in the case of *McCullough vs. Virginia*, the Supreme Court of Virginia had, instead of holding that the statute of 1871, which it had theretofore held to be valid, was repugnant to the Constitution of Virginia, ignoring the subsequent statutes which were passed to annul the contracts entered into under the statute of 1871, held in the absence of any facts whatever to sustain it, that the litigant had waived his right to challenge the invalidity of these subsequent statutes, this Court would not have permitted itself to be deprived of jurisdiction by this subterfuge any more than it did by the position which was taken by that Court.

It is our understanding, therefore, of the rule, that this Court will examine each case for itself and ascertain whether or not the independent ground, upon which it is claimed a case has been decided is broad enough to sustain such decision, is well founded and justified by the facts of the case and whether or not the same is not so intermingled with Federal rights as to become a part and parcel of the Federal question.

Such is the conclusion to be drawn from a careful reading of all of the cases decided by this Court wherein the question of jurisdiction upon a writ of error to a State Court was under consideration. The compass and meaning of a private contract between parties, certainly does not present a Federal question, yet this Court has uniformly reserved to itself the right to determine independently of the decision of the Supreme Court of a State, whether or not the language of an instrument under consideration constitutes a contract, as well as whether or not specific property was embraced within the terms of the instrument alleged to be a contract. In the case of *Jefferson Bank vs. Skelly, 1 Black 436*, on page 443 of the opinion, this Court very forcibly gives its reasons for this. It is there said:

"Of what use would the appellate power be to the litigant who feels himself aggrieved by some particular state legislation, if this Court could not decide, independently of all adjudication by the Supreme Court of a State, whether or not the phraseology of the instrument in controversy was expressive of a contract and within the protection of the Constitution of the United States."

And in the case of *Wilmington & Weldon Railway Co. vs. Alsbrook, 146 U. S. 279*, this language is used:

"The jurisdiction of this Court is questioned upon the ground that the decision of the Supreme Court of North Carolina conceded the validity of the contract of exemption contained in the act of 1834, but denied that particular property was embraced by its terms; and that, therefore, such decision did not involve a Federal question.

"In arriving at its conclusions, however, the State Court gave effect to the revenue law of 1891, and held that the contract did not confer the right of exemption from its operation. If it did, its obligation was impaired by the subsequent law, and as the inquiry whether it did or not was necessarily directly passed upon, we are of the opinion that the writ of error was properly allowed."

It seems to us that the reason given by the Court in these two cases, applies with equal force to the question of waiver. Where a State Court does not decide whether or not the obligation of a particular contract is impaired by a State law, but does decide that the instrument said to be a contract is not expressive of the contract contended for by the litigant, this Court takes jurisdiction for the purpose of first determining whether or not this instrument is expressive of such contract, in order that it may thereafter be determined whether or not the obligation of that contract has been impaired by the legislation of the State. And it does this, as it says, for the reason that not do so would render the appellate power of the Court of no use or value to the litigant. So it would seem upon the question of waiver, if this Court is not to determine whether or not the particular facts of a case constitute a waiver of the right to object to the constitutionality of a statute, then the

State Court may render absolute useless to the litigant the appellate power of this Court. If all that is necessary, is for the State Court to say in its opinion, that the litigant has waived his right to invoke the contract clause of the Federal Constitution, whatever may be the facts, this Court is thereby very easily deprived of its jurisdiction. So the question as to whether certain specific property is embraced within the terms of a contract under consideration, is not in any sense a Federal question, but when the same is interwoven with a question as to whether or not a subsequent law has impaired the obligation of that contract, this Court will look beyond the decision of the Court of a State and ascertain whether or not the State Court is right in determining that this specific property is not embraced within the terms of the contract, for the reason that if it is so embraced, the obligation of the contract may have been impaired. For the same reason, it would seem that this Court should look beyond the mere statement of the Supreme Court of a State, that a litigant has waived his right to invoke the contract provision of the Federal Constitution, and ascertain whether or not he has done anything to constitute such waiver for the reason that if he has not, then his contract may have been impaired. As is said by this Court in *McCullough vs. Virginia, supra.*

> "It is one of the duties cast upon this Court by the Constitution and laws of the United States, to inquire whether a State has passed any law impairing the obligation of a prior contract. No duty is more solemn and imperative than this, and it seems to us that we should be recreant to that duty if we should permit the form in which a State Court expresses its conclusions to override the necessary effect of its decision."

In the case at bar, it is contended that the law of Wisconsin, without which the decision in this case could not have been rendered, impairs the obligation of the contracts of the shareholders in the American Savings & Loan Association, and it seems to us

that it is the imperative duty of this Court to ascertain and determine whether or not this contention is true. And this Court, we cannot believe, can be relieved of that duty, by the mere statement of the State Court to the effect that these shareholders have waived the right to have this ascertained.

In the case of *Given vs. Wright, 117 U. S. 648*, the New Jersey Court, undoubtedly, based its decision of the case upon a ground independent of the Federal question that was raised. The facts of the case are briefly these: In 1758, the New Jersey Colonial Legislature set apart certain lands for the use of certain bands of Indians in that colony, investing the title in certain trustees for the benefit of the Indians and exempting the lands from any taxes, etc., also providing that the lands were inalienable. By subsequent legislation, the lands were sold for the benefit of the Indians to citizens of the colony, and neither in the act authorizing the sale nor in the deeds of conveyance was mention made of the exemption from taxation provided for in the original act. Immediately after the sale of the lands they were listed for taxation and regularly assessed, and upon the presentation of the legality of the assessment to the courts, it was held that the provision of the legislative enactment, exempting them from taxation, was a contract and, accordingly, that the lands were exempt. For sixty years, however, prior to the commencement of the action of *Given vs. Wright*, taxes had been regularly assessed on the lands and paid without objection, and this action was brought to determine the legality of the assessment upon said lands for the year 1876. The New Jersey Court sustained the assessment, holding that the uninterrupted acquiesence in the imposition of taxes for so long a time, raised a conclusive presumption that by some convention of the State, the right to exempt was surrendered. In this Court it was urged, that this was not a Federal question, hence, this Court had no jurisdiction. In a narrow and technical sense, that contention must be admitted to be true, but where it is charged that the obligation of

the contract created by the statute of 1758 had been impaired by subsequent legislation, the solemn duty of the Court to ascertain whether or not this contention is true, could not be discharged without an inquiry as to whether or not the independent question upon which the Court based its decision was well grounded. That such was the view of this Court, when the case was decided, is made perfectly clear by the language used. In the opinion it is said:

"The question, then, will be, whether the long acquiescence of the land owners under the imposition of taxes, raises a presumption that the exemption, which once existed, has been surrendered.

"This question, by itself, would be a mere question of State municipal law, and would not involve any appeal to the Constitution or laws of the United States. But where it is charged that the obligation of a contract has been impaired by a State law, as in this case by the general tax law of New Jersey as administered by the State authorities, and the State Courts justify such impairment by the application of some general rule of law to the facts of the case, it is our duty to inquire whether the justification is well grounded. If it is not, the party is entitled to the benefit of the Constitutional protection."

In the case at bar, it would seem in the express language of the Court in the above quotation, to be the duty of this Court to inquire whether or not the application of a general rule of law, to-wit, the doctrine of waiver, to the facts of the case, is well grounded. It is the application of this general rule, which the Court of Wisconsin uses as a justification for giving force and effect to the statute of the State, which we contend impairs the obligation of the contracts, and it would seem impossible for this Court to discharge its duty without an inquiry as to whether that justification is well grounded.

In a recent case to which we have had occasion to refer before, the case of *McCullough vs. Virginia, supra*, the case of *Given vs. Wright* is cited with approval. In the case of *McCullough vs. Virginia*, the Virginia Court but incidentally referred to the

statute, which it was contended impaired the obligation of the contract, but reached the conclusion upon which it based its decision, by holding that a previous statute was in conflict with the Constitution of Virginia. But in considering that case this Court says:

"It is true the Court of Appeals in its opinion only incidentally refers to the statutes passed subsequent to the act of 1871, and places its decision distinctly on the ground that that act was void in so far as it related to the coupon contract, but at the same time it is equally clear that the judgment did give effect to the subsequent statutes, and it has been repeatedly held by this Court that in reviewing the judgment of the Courts of a State we are not limited to a mere consideration of the language used in the opinion, but may examine and determine what is the real substance and effect of the decision."

In the case at bar the judgment could not have been rendered except by giving force and effect to the Wisconsin statute of April 19th, 1889, and the mere language used by the Court in rendering its decision, should not prevent this Court from examining and determining what is the real substance and effect of the Wisconsin decision.

In the leading case of *Murdock vs. City of Memphis, 20 Wallace 590*, seven propositions are laid down relative to the jurisdiction of this Court over the judgment of a State Court. The seventh of these is stated on page 636 and is as follows:

"Seventh. But if it be found that the issue raised by the question of Federal Law is of such controlling character that its correct decision is necessary to any final judgment in the case, * * * * * * * then this Court will reverse the judgment of the State Court and will either render such judgment here as the State Court should have rendered, or remand the case to that Court, as the circumstances of the case may require."

As we think we have shown, the question of Federal law in the case at bar is all controlling. The Wisconsin Court recognized that in giving prominence to it in the opening sentence of its

opinion. It was the construction, validity and effect of the law of Wisconsin which the Wisconsin Court states to have been the principal question presented. The judgment could not have been rendered except by giving validity to the act. The question of Federal law, we think, therefore, is of "such controlling character that its correct decision is necessary to any final judgment in the case."

Again, upon the question of the necessary consequence of a judgment being to give effect to an act complained of, whether the same is referred to or not, this Court in the case of *Houston & Texas R. R. Co. vs. Texas, 177 U. S. 66*, said:

"Thus we see that, although the decision of the State Court was based upon the ground that the warrants in which these payments were made had been issued in utter violation of the State Constitution, and were hence void, and that no payments made with such warrants had any validity, and although this ground of invalidity was arrived at without any reference made to the act of 1870, yet the necessary consequence of the judgment was that effect was thereby given to that act, and in a manner which the Company has always claimed to be illegal and unwarranted by the act when properly construed. The Company has never accepted such a construction, but on the contrary has always opposed it, and raises this question in this proceeding at the very outset. Upon these facts this Court has jurisdiction, and it is its duty to determine for itself the existence, construction, and validity of the alleged contract, and also to determine whether, as construed by this Court, it has been impaired by any subsequent State legislation to which effect has been given by the Court below."

To hold that a litigant has waived his right to say that the obligation of his contract has been impaired, is, in effect, to hold that the contract in that respect no longer exists, and under the above authority, it is clearly the duty of the Court to ascertain for itself, whether or not, the contract did exist in the respect in which it is contended by the litigant at the time the law was enacted. While this Court has in numerous cases said, that it had not power to correct the errors of State Courts when passing upon general rules of law, and that a decision by said Courts that a

litigant had waived his right to invoke the Constitution was not the decision of a Federal question, yet an examination of the cases, in which the question has been passed upon, discloses the fact that this Court has, in each instance, examined into the facts as presented by the record, and ascertained for itself whether or not the decision of the State Court was based upon the facts of the case, and in the language of the Court in the case of *Given vs. Wright*, was well grounded.

In the case at bar, it is our contention that the judgment or decision of the Court necessarily gave force and effect to the statute of the State, which we contend, impairs the obligation of the contracts of those represented by the plaintiff in error. The undisputed facts of the case show that those who are represented by the plaintiff in error have not only done nothing to waive their right to urge this objection, but were utterly and entirely ignorant of all of the facts, including the passage of the law, until this proceeding was commenced. (Record Page 39). And that the question of waiver, as stated by the Court, is so intermingled with the Federal question as to become a part and parcel of it.

As heretofore shown, the Wisconsin Court could not have rendered the decision which it did in this case, except by giving force and effect to the law of 1889. The validity of this law was challenged in the Court by the plaintiff in error; not only by his assignment of errors filed therein, but in his brief and oral argument. The Court, by the language used in its opinion, does not pass upon the constitutionality of the law, but says that the right to insist upon this objection has been waived. In other words, the Court justifies the impairment of the obligation of the contracts of the shareholders, who are represented by the plaintiff in error, by saying that they, themselves, consented to it. The first inquiry, therefore, will be, is this justification well grounded and is it sustained by the undisputed facts of the case? The language of the Court in passing upon this question is:

"We cannot perceive how it can be maintained that the contract clause of the Federal Constitution can be invoked to release these securities from the operation and effect of such pledge and estoppel, whatever view may be taken of the rights and relations of the entire body of stockholders as between themselves and the corporation. They have waived their right to insist upon the constitutional objection they urge against the Wisconsin statute or to question the validity of the trust. Whatever modification or change may have occurred in the contractual relations existing between these parties, is the sole result of their lawful and proper consent, or of those who were chosen and fully empowered in law to represent them. namely, the board of directors, without whose authority the securities could not have been deposited or pledged under the statute. The right to invoke the contract provision of the Federal Constitution, we think, has been waived by them."

Then follows the citation of numerous authorities upon the proposition that where a constitutional provision is designed for the protection of the property rights of the citizen, it is competent for him to waive it. After quoting a Wisconsin case the Court says:

"So in the present case, in consideration of the benefits derived by the defendant corporation and its shareholders from the statute under consideration, in being allowed to enter the State and transact business therein, they must be precluded from insisting upon the invalidity of the statute."

After citing further authorities the Court continues:

"The views we have already expressed render the contention of the appellant in respect to the relations which the shareholders of a mutual building association ordinarily sustain to the corporation and to each other inapplicable, as well as the contention that the enforcement of the trust specified in the statute in these securities will destroy equality of right between the shareholders in general, rendering, as it is contended, the Wisconsin shareholders preferred shareholders.

"Whatever the practical result of the enforcement of the trust in favor of Wisconsin shareholders, creditors, and others sustaining contractual relations with the corporation defendant may be, it rests, as we think and as we hold, upon the consent of the corporation and of its shareholders, lawfully given as it well might

be in the present case, by and through its board of directors, for a valid consideration received by the corporation to the benefit and advantage of those now denying its validity."

As to whether or not this corporation or its shareholders derived any benefit from this law, may not be a question which this Court will consider, but it seems proper to say, that the statement of the Wisconsin Court upon this point is entirely gratuitous. There are no disputed facts in the case. They are all contained in the answer and counter-claim and not one fact therein stated will bear the construction that even the corporation derived any benefit from the law or from making the deposit under it. It was not, by making this deposit, allowed to enter the State, as is said by the Court, on the contrary, the undisputed facts show, that the corporation was doing business in the State prior to and at the time of the passage of the law, and had, at that time, 162 shareholders in the State of Wisconsin. The corporation was forced by this law to deposit these securities or abandon its business with these 162 shareholders, thereby breaking its contracts with them.

Nothwithstanding some of the language used in the opinion of the Wisconsin Court, it cannot be possible that the Court meant to hold that the board of directors of this corporation, or even a majority of the stockholders, could take any action or do anything which would give increased rights to one class of shareholders, or an increased value to one class of stock. Such action to be binding upon all, must be consented to by all. There are no propositions in the law of corporations more firmly established, than that corporators associated for a special purpose, specified in their charter or articles of incorporation, can not change that purpose without the consent of all the corporators, and that there is no power in a corporate body, either through its board of directors or by the majority vote of its stockholders, to provide for the creation of preferred stock so as to bind a minority of the stockholders not assenting thereto.

Zabriskie vs. Railroad Co., 18 N. J. Equity 178.
Kent vs. Quicksilver Mining Co., 78 N. Y. 159.
Knoxville vs. R. R. Co., 22 Fed. Rep. 758.
Attorney General vs. Bank, 26 La. Ann. 288.
Railroad vs. County, 79 Pa. State, 210.

The Court, therefore, could not have meant that stockholders who did not consent to the deposit of these mortgages, could have waived their right to assert that the act under which they were deposited impaired the obligation of their contracts. Such a doctrine would do violence to every principle of justice and right, as well as be in conflict with the well established principles of the law. A litigant will not be held to have waived a right, except by some binding act, done by himself or some one authorized to represent him in that respect. The record not only does not disclose any facts indicating a consent upon the part of the shareholders represented by the plaintiff in error to the deposit of these mortgages, but it affirmatively shows, that they not only did not consent thereto or acquiesce therein, but did not know that they had been deposited. Nor is there anything to be found in the record to indicate, that even a majority of the shareholders authorized the board of directors to deposit these mortgages with the State Treasurer of Wisconsin. And even if there was, such authority would not serve to bind a shareholder who had not consented thereto. The record shows, that on the 31st day of July, 1888, the articles of incorporation were amended by inserting therein "The board of directors may sell and dispose of the mortgages held by this corporation whenever they may deem best and as provided by the by-laws." This amendment may have been adopted by a majority vote of the shareholders, or it may have been adopted by a two-thirds vote of the board of directors, as the record shows that the board of directors by a two-thirds vote could amend the articles of incorporation. But we do not understand that this was author-

ity to the board of directors to deposit these mortgages with the State Treasurer of Wisconsin, but merely general authority to sell or dispose of the mortgages. As a matter of course, it presupposes that they would be so sold or disposed of as to result in equal benefit to all the shareholders, and there certainly is not in this any authority to the board of directors to make any such disposition of the mortgages as would create a preferred class of shareholders, but it undoubtedly contemplated such sale or disposition that all shareholders would share equally in its results. This was the only special authority ever given to the board of directors upon the subject.

This question of waiver was not argued before the Supreme Court of Wisconsin and it is difficult for us to understand upon what facts the Court has based its decision. Let it be conceded that the officers and directors could have waived the constitutional question for the corporation; they certainly had no power to do anything that would change the relative interest of each shareholder in the common property of the corporation. The admitted facts of the case upon this point are, that the mortgages in question were deposited by the officers of this association and that the shareholders, who are represented by the Receiver in this case, had no knowledge, whatever, of the deposit of these mortgages by said officers, nor did they at any time thereafter consent thereto or acquiesce therein. It is not the corporation which is seeking to invoke the contract clause of the Constitution; it is not the corporation which is declaring that the obligation of these contracts was impaired by this law, nor is it the property of the corporation which is affected by this impairment. The contracts, which are impaired, are the contracts by which the shareholders became shareholders in the corporation, and the property to be affected is the value of the shares of their stock. It is, therefore, the personal and individual right of the shareholder, which is infringed and the personal property of the shareholder which is affected. This property he holds, not as a part of the common property of the corpora-

tion, but it is his individual, personal property. The effect of this law is to give greater value to the stock of 162 Wisconsin shareholders, who were such shareholders of the corporation at the time the law was enacted, than their stock had before the passage of the law. It is to make all of these shareholders payable in full out of certain specific property of the corporation, which was the common property of all of the shareholders, before any of the other shareholders shall receive any benefit from this property. It, therefore, creates of these 162 Wisconsin shareholders, preferred shareholders in this corporation, and therein alters and changes the value of the stock owned by the shareholders residing in other States, thereby changing and altering their contracts. It therefore impairs the obligation of all of these contracts. The officers and directors of this corporation could not waive for these shareholders the constitutional guaranty which they had, that the obligation of their contracts should not be impaired. This could only be done by some act of theirs, and so long as they remained utterly ignorant of the fact that these mortgages had been deposited, as is disclosed by the record, it is not possible that they could have waived the right to assert the unconstitutionality of the statute under which the deposit was made. The independent ground, therefore, upon which it is contended the Wisconsin Court based its decision, is not well grounded, nor justified by the facts of the case.

It was held by this Court in *Moran vs. Horsky*, 178 U. S. 205, that where some general principle of law decided by a State Court was intermingled with that of Federal right, the former would not be considered an independent matter. The question of waiver is so intermingled with the Federal question asserted here, that it cannot be considered an independent question. There was certainly no direct waiver upon the part of the shareholders whom the Receiver represents. If there was any waiver at all, it resulted from the action of the board of directors in depositing these mortgages. The mortgages were deposited in compliance with the

statute and in determining whether or not there was a waiver, the Court must, of necessity, consider the entire transaction, as the Supreme Court of Wisconsin evidently did, including the deposit of the mortgages and the construction, validity and effect of the law. It is, therefore, the duty of this Court, to inquire into all the facts of this case, and determine whether or not the Wisconsin statute has impaired the obligation of the contracts of the shareholders who are represented by the plaintiff in error.

II.

THE WISCONSIN LAW OF 1889 IS REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES.

1.

It Impairs the Obligation of the Shareholders' Contracts.

This law does not operate directly upon these contracts. In itself it is innocent enough and a construction could be placed upon it, which would not in any way impair the obligation of the contracts. It provides that no foreign building and loan association shall issue shares, receive moneys, or transact business in the State unless such association shall have and keep on deposit with the State Treasurer of Wisconsin, in trust for the benefit and security of all its members in the State, securities of the cash value of $100,000, and that the State Treasurer shall hold the same in trust until all shares have been fully redeemed and paid by such association, and until its contracts and obligations to residents of Wisconsin shall have been fully performed and discharged. It is well settled, that, except when the same is in conflict with the

interstate commerce provision of the Constitution, a State may exclude a foreign corporation or may permit it to do business within the State upon such restrictions and regulations as the State may prescribe. But it is equally well settled, that where a State permits a corporation to come in and do business without restrictions or regulations of any kind, it cannot thereafter pass any law that will affect the business previously done by that corporaion, or the contracts previously entered into. A foreign building association, therefore, that had, prior to the passage of this law, never done business in the State of Wisconsin, would stand in an entirely different position from that occupied by one that had been permitted to enter the State and to do business prior to the passage of the law, and had a large number of shareholders in the State at the time of its enactment.

It is easy to see how the law might have been held to apply only to live, going building associations, in which event, it would have been entirely valid. The securities would then be held by the State Treasurer, under this law, as a guarantee that the shareholders in Wisconsin should be secure in every right which they have, growing out of their contracts of membership. But in the decision, which we complain of, the highest Court of Wisconsin has held that the law applies to an insolvent building association, and that the securities held by the State Treasurer are to be applied to the payment of Wisconsin shareholders in full to the exclusion of shareholders in other States. It is this construction which makes the law impair the obligation of the contracts in question. It is, however, as much invalid, as if the law by direct terms, rather by the Court's construction, impaired the obligation of these contracts. In the case of *Bridge Proprietors vs. Hoboken Co., 1 Wallace 116*, the Court says:

"It is said, however, that it is not the validity of the act of 1860 which is complained of by plaintiffs, but the construction placed upon that act by the State Court. If this construction is

one which violates the plaintiffs' contract, and is the one on which the defendants are acting, it is clear that the plaintiffs have no relief except in this Court, and that this Court will not be discharging its duty to see that no State legislature shall pass a law impairing the obligation of a contract, unless it takes jurisdiction of such cases.

The same principle is stated in *Kennebec R. R. Co. vs. Portland R. R., 14 Wallace 23,* and *New Orleans Waterworks vs. Louisiana Sugar Co., 125 U. S. 18.*

In the case at bar, it is our contention that the Wisconsin law of 1889, as construed by the Wisconsin Court in the decision of which we complain, impairs the obligation of the contracts of membership in the American Savings & Loan Association, of all the shareholders therein, who are in this litigation represented by the plaintiff in error, and this we shall proceed to show.

The Nature of the Business of a Building Association.

The general nature of the business of the American Savings & Loan Association, of which the plaintiff in error is the general receiver, is set out in the second provision of the articles of incorporation, which reads as follows:

"Second. The general nature of the business of this association shall be to assist its members in saving money, and in buying and improving real estate, which shall be done by accumulating a fund of money by payments for stock issued to its members, and loaning the said fund with accumulations to such members; also to acquire, hold and transfer all such real estate, as may be necessary or convenient for the purpose of conducting, carrying on or disposing of the business of the association." (Record page 43.)

The certificates of stock issued to the Wisconsin members, were the same as those issued to the members in other States. That which goes to fix the character of the association, the relations of its members thereto and to each other, is stated in the 1st,

3rd and 9th provisions of the certificates of stock. While there were a number of different forms of certificates of stock used, the 1st, 3rd and 9th provisions are to be found without substantial difference in all. They are as follows:

"First. The shareholder agrees to pay to this association 60 cents monthly for each share until such share matures or is withdrawn."

"Third. Fifty cents of each monthly payment on each share and all fines shall go into the loan fund; the remainder of such payments and all fees shall go into the general or expense fund. No part of the loan fund or interest or profits thereon, can be used for expenses of any kind except for taxes thereon."

"Ninth. Once in three months the profits arising from interests, premiums, fines, and other sources, shall be apportioned among the shares in good standing. Whenever the monthly payments made on any share, together with the profits apportioned to such share, amount to $100, such share shall be deemed to have matured and no more monthly payments shall be required. The directors may require any share to be withdrawn at any time after it has matured. If losses occur, they shall be deducted from the undivided profits so far as possible; any deficiency may be charged up to the shares in force." (Record pages 102, 103 and 104.)

These provisions of the certificates of stock, which were issued to each member, were in accord with the provisions of the by-laws. Substantially the same provisions are to be found in the articles of incorporation, by-laws and certificates of membership of all mutual building associations. From these it is apparent, and has been abundantly settled by the decision of the Courts, that absolute mutuality of interest is the foundation of all such corporations.

The best statement of the workings of a building association, which we have seen, is that made by Judge Grosscup in the case of *Towle vs. American Building, Loan & Investment Society, 60 Fed. Rep. 131.* It is as follows:

"Under the constitution of the society each member passed

into the treasury, periodically, certain stipulated sums. The fund thus collected is loaned out upon real estate security. The interest of the member is not that simply of a depositor in a bank, or a creditor of a corporation. He holds no promise of the corporation for a return of his fund. He is a part owner of the fund—has an interest directly in the fund—and is entitled to a proportionate share, as owner, upon its distribution. The whole scheme of building associations is that of a corporate co-partnership, whereby are gathered into a common fund, and loaned as such, the money of many individuals. The interest of each shareholder in the sums thus collected and loaned is as direct as if no corporation intervened. The corporation has no function or power, except to loan out these gathered sums, and return the avails thereof into the hands of the contributors."

Mutuality, is, therefore, the law of the being of a building association. The articles of incorporation of the American Association, which are the fundamental law of a corporation in Minnesota, are substantially the same as the charter provisions of the one under consideration by Judge Grosscup. In fact, in the particular which goes to the very essence of the corporation itself, that of mutuality, there is to be found but the very slightest difference in the fundamental law of all the various building associations. Mutuality is the essence of them all.

It is a well settled principle of law, that the law of its being enters into and becomes a part of every contract which a corporation makes. Every shareholder in this association maintained a contractual relation with the association, which, in the very nature of things, was a contractual relation with every other shareholder. The certificate of stock which he received was the written evidence of that contract. The essence of the contract was mutuality. The very essence, therefore, of the contract, which each shareholder entered into with each other shareholder upon becoming a member or shareholder of the association, was that he would share with him equally the losses of the common enterprise. Each shareholder upon accepting his certificate of stock, agreed that he would be an

equal participant in the fortunes of the association, whether they were good or bad.

If the association had been successful, each would have received his proportionate share of the profits. The association having failed, no proposition of law has been more thoroughly established by recent decisions, than, that each shareholder must bear his proportionate share of the losses. He must do this, because this was the agreement which he made upon becoming a shareholder. We cite the following as a few of the cases wherein the principles above stated have been announced.

Towle vs. American Building, Loan & Inv. Society, 60 Fed. Rep. 131.
Curtis vs. Granite State B. & L. Assn., 69 Conn. 6.
Strohen vs. Franklin S. F. & L. Assn., 115 Pa. St. 273.
Eversmann vs. Schmitt, 53 Ohio St. 174.
Rogers vs. Hargo, 92 Tenn. 35.
Hale, Receiver, vs. Cairns, 8 N. D. 145.
Hale, Receiver, vs. Phillips, Sup. Court, Arkansas, Oct. 27, 1900.

THE SHAREHOLDERS' CONTRACTS ARE CHANGED BY THE LAW.

Our contention, therefore, is that by the terms of the articles of incorporation, the by-laws of the association, and the certificates of stock, each shareholder, when he became such, entered into a contract, whereby he agreed to share equally and alike with each other shareholder, the profits and the losses of their common undertaking. Such was the contract, which each of the 162 shareholders in the State of Wisconsin, who were such prior to and at the time of the passage of the law of 1889, entered into; not only with the corporation, but with the shareholders in Minnesota, in Texas and in the other States of the Union. The law also writes into their

contracts, that the law of Minnesota, the domicile of the corporation, which was in force at the time their contracts were made, with reference to the appointment of a receiver, should control and govern in event their enterprise failed and the corporation became insolvent. The record shows, that the law under which this plaintiff in error was appointed receiver, and under which the District Court of Hennepin County, Minnesota, is seeking to wind up the affairs of this insolvent estate, was in force at the time these shareholders became such in this association, and in fact, during all the time this association was in existence. Had this association failed and the plaintiff in error been appointed receiver thereof on the day prior to the 19th day of April, 1889, instead of in January, 1896, the 162 shareholders in Wisconsin would have become mutual participants with the shareholders in the 34 other States in the distribution of its assets. They would have received the same proportionate share in this distribution, no more, no less. The Wisconsin statute here complained of, became a law on the 19th day of April, 1889, and under the construction placed upon it by the Supreme Court of Wisconsin in the decision which we are seeking to have reviewed, they will receive dollar for dollar of the sums which they have paid in to said association upon their stock, when the shareholders residing in other States will receive not to exceed 40 per cent upon the dollar of the sums which they have paid in; the sums paid in upon their stock, having been paid by the Wisconsin shareholders upon the same contracts and under the same terms as the sums paid upon their stock by shareholders in other States. These sums will be paid to these Wisconsin shareholders out of what was, prior to the passage of the Wisconsin law, April 19th, 1889, the common property of all the shareholders in said association.

It is apparent, therefore, that under the construction placed upon said law by the Supreme Court of Wisconsin, the Wisconsin shareholders are made preferred shareholders in said association.

In the case of *Ogden vs. Saunders, 12 Wheaton 213*, Justice Washington in writing the opinion of the Court, said:

"A contract is defined by all to be an agreement to do, or not to do, some particular act."

In the case at bar, it was agreed between all of the shareholders residing in the various States, including those residing in Wisconsin, that each should receive an equal share of such profits as resulted from their common enterprise, and, each should bear equally, the burden of such loss as might result from this enterprise, and in event the enterprise should fail and the corporation should become insolvent, that the same should be wound up by a receiver appointed by the Courts of Minnesota and according to the laws of Minnesota. Continuing in that decision it is said:

"And in the construction of this agreement depending essentially upon the will of the parties between whom it is formed, we seek for their intention with a view to fulfill it."

The intention of the shareholders in this association is perfectly clear. It was that they should be mutual participants in a common enterprise, sharing equally its fortunes. Continuing, Justice Washington said:

"Any law, then, which enlarges, abridges, or in any manner changes, this intention, when it is discovered, necessarily impairs the contract itself, which is but the evidence of that intention. The manner, or the degree, in which this change is effected, can in no respect influence this conclusion; for whether the law affect the validity, the construction, the duration, the mode of discharge, or the evidence of the agreement, it impairs the contract, though it may not do so to the same extent, in all the supposed cases."

Under this authority it would seem that the first inquiry is: Has the intention of the shareholders in this association been in any manner changed? And the second is: Has it been changed by a law made by the State of Wisconsin?

That their intention has been changed, is perfectly clear. At the time these 162 shareholders became members of this association, it was the intention of each of them and each of their associates in the enterprise, wheresoever he might reside, that in event it should fail, they should each have the same proportionate share of the assets, no more, no less. Had the Wisconsin law of April 19th, 1889, never been enacted, there can be no possible question, but what such would have been the result. Had the legislature of Wisconsin never passed this law and the mortgages never have been deposited with the State Treasurer, there can be no question but what upon the winding up of this association by its receiver, these 162 Wisconsin shareholders would have received the same proportionate share of the assets, as would be received by the shareholders residing in other States. If they are, therefore, now to receive, as the record in this case shows, a larger proportion of these assets, the intention of the parties to these contracts will have been changed and the obligation of their contracts impaired. That change is effected by the operation of the Wisconsin law as construed and enforced by the Wisconsin Courts.

From the time of the decision of *Fletcher vs. Peck, in 6 Cranch, 87*, down to the present day, there is a long unbroken line of decisions by this Court, to the effect that every law, the result of which is to enlarge, abridge, or in any manner change a contract, is void, because repugnant to section 10 of article 1 of the Constitution of the United States. It is our contention in this case, that this Wisconsin statute, as construed by the highest Court of Wisconsin, is void, for the reason that it gives to the shareholders of Wisconsin a preferred interest in certain of the assets of the insolvent American Building Association, thus enlarging their rights as shareholders in said association; thereby changing the contracts which they entered into on becoming shareholders.

There will be no dispute that each Wisconsin shareholder

sustained a contractual relation to the association. It is well settled by recent decisions, that this relation, in the very nature of things, creates a contractual relation with every other shareholder. We have seen that the essence of this contract, is that every shareholder assumes like obligation, like responsibilities, and like liabilities, and that each is entitled to like rights, like immunities and like benefits. Under it, no one can have any advantage over another. It is a contract made upon a valuable consideration. It is contract for the security and disposition of property. It is a contract upon the faith of which hundreds of others have become members of the association, and acquired vested rights in its property. It is a contract on the faith of which mortgages have been taken, real estate acquired and sold, and all other business incident to a building association transacted. Under this contract, when entered into by these 162 shareholders, the Wisconsin shareholders had equal rights and equal interests with the shareholders residing in 34 other States, no greater, no less. Under the contracts, when entered into, in the event of the association's failure, they would receive an equal proportionate share of the association's property, when it was duly distributed, no more, no less. "The storm of insolvency" has come to the association; it has failed in the purpose for which it was created. The question, therefore, which addresses itself to the Court, is: Are the Wisconsin shareholders now to receive a greater proportion of the association's property, than the shareholders residing in other States? Are they to receive back all which they have paid in, and the other shareholders to receive back but 40 per cent of what they have paid in? This is what will result, if the decision of the Wisconsin Court is permitted to stand. If such is to be the result, then the contract must have been changed. If changed, by what authority was it changed? This change was not effected by the mutual agreement of the parties, for it is an established fact that the shareholders, who are represented by the plaintiff in error, had no knowledge of the transac-

tions which resulted in giving to the Wisconsin shareholders their enlarged rights. The officers of this association could not change these contracts. They could not, by agreement with one shareholder or class of shareholders, so change his or their contracts as to affect the rights of other shareholders. The change, which has taken place in these contracts, was effected by the operation, construction and enforcement of the Wisconsin law. It will not do to say, that this law does not change the contracts, for the reason that it was left optional with the corporation as to whether it would comply with it or not. This is not true. If the corporation complied with the law, it changed its contracts with the Wisconsin shareholders. If it failed to comply with the law, it was rendered incapable of carrying out its contracts, and in either event the obligation of the contracts was impaired.

In *Green vs. Biddle*, 8 *Wheaton*, on page 83, it is said:

"The objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the extent of the change which the law effects in it. Any deviation from its terms, by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispening with the performance of those which are, however minute, or apparently immaterial, in their effect upon the contract of the parties, impairs its obligation."

To quote again from *Ogden vs. Saunders*, on page 256:

"This leads us to a critical examination of the particular phraseology of that part of the above section which relates to contracts. It is a law which impairs the obligation of contracts, and not the contracts themselves, which is interdicted. It is not to be doubted, that this term, *obligation*, when applied to contracts, was well considered and weighed by those who framed the constitution, and was intended to convey a different meaning from what the prohibition would have imported without it. It is this meaning of which we are all in search. What is it, then, which constitutes the obligation of a contract? The answer is given by the Chief Justice, in the case of *Sturgis vs. Crowinshield*, to which I readily assent now, as I did then; it is the law which binds the parties to perform their agreement. The law, then, which has this binding obliga-

tion, must govern and control the contract, in every shape in which it is intended to bear upon it, whether it affects its validity, construction, or discharge."

The obligation of the contracts under consideration, bound the 162 Wisconsin shareholders to share equally with the shareholders in other States, the losses of the corporation in event it failed. The Wisconsin law released them from this obligation, for the reason that if the deposit was made by the association under the terms of the law, it was, under the decision of the Wisconsin Court here under consideration, made for the purpose of giving them a larger interest in the corporation's assets in event of failure. If it was not made, they were released by the terms of the law from making further payments upon their stock, as the corporation was, by the express terms of the law, prohibited from collecting these payments.

We have seen what was the agreement of these shareholders as it relates to one another. There was another feature of their contracts stated in express words in the certificate of membership. This was that the members would make certain stated payments. The corporation agreed with these shareholders, as a part of those contracts, that it would receive these payments. As a part of its contract with every other shareholder, it agreed that it would collect them. Now comes the Wisconsin law, after these contracts are made, and says to this corporation: You shall not issue shares, receive moneys, or transact any business in this State until a deposit shall be made, which will constitute preferred shareholders of the Wisconsin members of your association. If it makes this deposit and constitutes these Wisconsin shareholders preferred shareholders, it is clear that the contracts are changed and thereby the obligation impaired. If it fails to make this deposit, it cannot receive or collect moneys from its Wisconsin shareholders, and is, thereby, prevented from carrying out its contracts with them, or with the other shareholders, and the obligation of the contracts is

thus impaired. Any law which changes a contract so as to release or prevent either party thereto from performing his agreement, impairs its obligation. Any law, under the operation of which either party is permitted to leave undone that which he agrees and undertakes in the contract to do, or is prevented from doing that which he agrees or undertakes in the contract to do, impairs its obligation. This Wisconsin law required the corporation to either do that which changed its contracts with its Wisconsin shareholders, or upon its failure to so do, prohibited it from doing that, which in its contracts with its Wisconsin shareholders and its other shareholders, it agreed and undertook to do. So, by this law, the corporation was placed in a position, where if it did comply with the law, or if it failed to comply with the law, the obligation of its contracts was impaired.

The Wisconsin law impairs the obligation of the contracts for the additional reason, that it imposed a condition not expressed in these contracts. In order to do business with the 162 shareholders in Wisconsin, and with the other members of the association at the time this law was passed, the association was compelled to make a deposit. This is a new condition imposed by the law which was not expressed in their contracts, and under the authority of *Green vs. Biddle*, above quoted, it impairs the obligation of those contracts; the corporation, be it remembered, was already doing business in Wisconsin.

It is well established, that a State may require compliance with such conditions as it pleases, before permitting a foreign corporation to do business within its borders, or, it may exclude them altogether. Every State has full power to restrict and regulate the business of a foreign corporation, but if it fails to do any of these things, and a foreign corporation is permitted to come into the State and there make contracts with the citizens of that State, that State cannot pass any law which changes, affects, alters or modifies those contracts, not even under the guise of regulating the business of a

foreign corporation. Where a State permits a foreign corporation to come and do business within its jurisdiction, without making any regulations whatever to govern it, such foreign corporation does business in said State, the same as in the State of its creation and carries with it to said State, all of the laws which govern it in the State of its creation; both those for the management of its affairs while it is a live, going corporation, and those for the settling up of its affairs, in case of insolvency and dissolution. This is well settled by the case of *Relfe vs. Rundle, 103 U. S., on page 225*, where it is said:

"No State need allow the corporations of other States to do busines within its jurisdiction unless it chooses, with perhaps the exceptions of commercial corporations; but if it does, without limitation, express or implied, the corporation comes in as it has been created. Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence. It may be restricted in the use of some of its powers while doing business away from its corporate home, but every person who deals with it everywhere is bound to take notice of the provisions which have been made in its charter for the management and control of its affairs both in life and after dissolution."

To the same effect is *Canada Southern Railroad Co. vs. Gebhard, 109 U. S. 527.*

The State of Wisconsin, for several years before the passage of the law here complained of, permitted the American Building & Loan Association to do business therein without restrictions or special regulations. The association, therefore, took with it to that State, the Laws of Minnesota under which it was organized and did business. Not only the laws, which provided for its management and control during life, but the laws which provided how it should be wound up in event of insolvency. These laws and the articles of incorporation were its charter. Of every contract which it made in Wisconsin, these became a part, and the State of Wisconsin could not pass any law, which changed or altered these contracts or affected the business theretofore done.

As to the 84 shareholders, who became members of the association after the Wisconsin law was passed and these mortgages were deposited, the case would not at first seem to be so strong. But let us see if the same reasoning will not apply. We have seen that it is established by the decisions of this Court, that when the association entered Wisconsin, and was permitted to do business there, without condition or restriction, it took with it the laws of the State of Minnesota, which governed and controlled its actions. What it was permitted to do in Minnesota, it was permitted to do in Wisconsin. What it was forbidden to do in Minnesota, it was forbidden to do in Wisconsin; the same is true of the 34 other states where the association did business. These Minnesota laws, which governed and controlled its action, entered into every contract which it made and became as much a part of such contracts, as the express stipulations therein. One of these provisions of the law of Minnesota, prohibited the association from issuing preferred stock.

Section 23, Chapter 236, General Laws, Minnesota, 1889, approved April 30, 1889, reads as follows:

"SEC. 26. Every such association heretofore organized under the laws of this State or incorporated under this act, are hereby prohibited from hereafter creating or issuing any preferred or non-contributing stock, but this Section shall not prevent the issue of different series of stock."

Section 26, Chapter 131, General Laws of Minnesota, 1891, being Section 2880, Statutes of Minnesota of 1894, reads as follows:

"Every such association heretofore organized under the laws of this State or incorporated under this act shall not issue preferred stock * * *"

Into every contract that the association made, this prohibition entered. With every member who subscribed for stock, the association agreed that no preferred stock should be issued. The Wis-

consin law, as construed by the Wisconsin Court, creates of these 84 shareholders, who became such after the passage of the law, as it does those who were such before, preferred shareholders, by giving them a preferential interest in the mortgages which were deposited in Wisconsin and which were a part of the common assets of the association. By this law, therefore, the association has been compelled to violate its agreement with every other shareholder. By the laws of Minnesota the association was forbidden to issue any stock, which would be preferred in any sense over the stock issued to all other shareholders. Into every share of stock which had been issued, this prohibition entered as a condition of the contract. Every shareholder accepted membership with that understanding and agreement. Should not these 84 shareholders, with the knowledge of the Minnesota law which is imputed to them, be rather said to have waived by their subscription to the stock, all rights of preference which the Wisconsin law gives them? The law, therefore, places the association in a position where it is absolutely compelled to break its contracts, select whichever horn of the dilemma it may.

This Wisconsin law says to the corporation with its 162 shareholders in the State, making their regular monthly payments to the association: Unless you make a deposit with the State Treasurer, which shall make of all the Wisconsin shareholders of your association, preferred shareholders, you cannot receive or collect from these 162 shareholders, the dues which they have agreed to pay and which you have agreed to receive and collect. If the association, therefore, makes its deposit, it violates its contracts with all of the shareholders by issuing preferred stock; if it fails to make the deposit, it is compelled to break its contracts, because it can no longer receive or collect the dues from the 162 Wisconsin shareholders.

The agreement, therefore, which was made by this association with every shareholder which it received, and, which became an

agreement between that shareholder and every other shareholder, was, that each would share alike the profits or the losses of the common enterprise. The obligation of this agreement has been defined in *Ogden vs. Saunders*, as the law which binds the parties to perform that agreement. This obligation has been impaired by the Wisconsin statute here under consideration, for under its operation, as construed by the Wisconsin Court, upon the insolvency of the association, it is rendered impossible that these shareholders should share alike the losses which their common enterprise has sustained. This enterprise has proven unsuccessful. The binding obligation of their contract, therefore, is, that all should bear their share of the losses, including the Wisconsin shareholders. This the Wisconsin law prevents, hence, it impairs the obligation of these contracts.

2.

PRIVILEGES AND IMMUNITIES ARE GRANTED TO CITIZENS OF WISCONSIN, WHICH ARE DENIED TO CITIZENS IN THE SEVERAL STATES OTHER THAN WISCONSIN.

In the opinion of the Wisconsin Court, when this case was before it upon an appeal from an order of the Circuit Court sustaining demurrers to the answer and counter-claim of this plaintiff in error, the Court did not touch upon the question as to whether the Wisconsin law is repugnant to section 2 of article 4 of the Constitution of the United States. When the case was remanded to the Circuit Court and judgment rendered against plaintiff in error, and an appeal taken from that judgment to the Supreme Court, this question was raised by assignment of errors. (Record page 133.)

In affirming the judgment of the Circuit Court, the Wisconsin

Court does not see fit to file any additional opinion more than to refer to their former opinion as expressive of their present views. (Record page 135.) The question, therefore, as to whether or not privileges and immunities are granted to citizens of Wisconsin, which are denied to citizens in other States, was raised by the plaintiff in error in Supreme Court of Wisconsin.

Sully vs. American National Bank, 178 U. S. 289.

In the decision of the Court, however, the question was necessarily passed upon, though not referred to in the opinion, and no suggestion is made that the shareholders have waived their right to insist on this constitutional objection to the law.

It is the clear intent and meaning of the case of *Blake vs. McClung, 172 U. S. 239*, and *176 U. S. 59*, as expressed in the syllabus of the latter case, "that when the general property and assets of a private corporation, lawfully doing business in a State, are in the course of administration by the Courts of such State, creditors, who are citizens of other States, are entitled, under the Constitution of the United States, to stand *in all respects* upon same plane with creditors of a like class who are citizens of such State, and cannot be denied equality of right simply because they do not reside in that State but are citizens residing in other States of the Union." We are drawn irresistibly to the conclusion that the meaning of the Court's decision in these cases is, that a State cannot require its Courts, in the distribution of the assets of an insolvent private corporation, to give preference to domestic creditors, or pay domestic creditors in full before creditors residing in other States shall receive any part of the assets of said insolvent corporation. And for a State to do this, is to grant privileges and immunities to its own citizens, which are denied to citizens of other States, and hence a violation of section 2 of article 4 of the Constitution of the United States. Under the Wisconsin statute complained of in this case, as the same is construed by the Wisconsin

Supreme Court and as it is applied by that Court to the facts of the case, it would seem, to use the language of this Court in *Blake vs. McClung* that, "the Courts of that State are forbidden to recognize the right in equity of citizens residing in other States to participate upon terms of equality with citizens of Tennessee (Wisconsin) in the distribution of the assets of an insolvent foreign corporation lawfully doing business in that State."

The American Savings & Loan Association was lawfully doing business in the State of Wisconsin. It had been permitted by the State to come there and do business without regulation or restriction. It was doing business there the same as it was doing business in Minnesota and in the 34 other states to which its business extended. Its business in Wisconsin, as in all of the other states, was to collect from its members in that State, their regular monthly payments due by them upon their stock, and to loan moneys thus realized to its members in that State, and to receive from those making loans, the premiums and interest which they agreed to pay. While thus doing business in Wisconsin, the State makes a law which says in effect: you cannot continue to make these collections, as you have with the consent and permission of this State contracted and agreed to do, unless you make a deposit, out of which, if you shall become insolvent, your shareholders residing in Wisconsin shall be paid back the amounts which they have paid in to your association in preference to the shareholders residing in other states. This is the clear intent and meaning of this law, as construed and applied by Courts of the State, and its effect is to prevent the property of the American Association in Wisconsin from being administered as a trust fund for the benefit of all its shareholders, and to require that it should be administered for the benefit of the Wisconsin shareholders exclusively.

Had this Wisconsin law been enacted before the American Building Association was permitted to go into Wisconsin to do business, or had it been applied by the Courts of the State only to

such shareholders who became such after its enactment, it might not be subject to the objection which we are here urging, and might be said not to come within the rule of *Blake vs. McClung*. But applying the law to the shareholders, who were such before its enactment, as the Wisconsin Court does, can be nothing more nor less than an attempt upon the part of the State of Wisconsin to give to its citizens a preferential interest in assets of an insolvent corporation which was lawfully doing business in that State.

In its effect, as applied by the Courts of Wisconsin, this law is not in any material respects different from the Michigan statute, which was under consideration by the United States Circuit Court of Appeals, in *Maynard, Attorney General vs. Granite State Provident Association, 92 Fed. Rep. 435.* The Michigan statute provided that, stockholders and creditors in Michigan of a foreign building and loan association should have a first lien on all assets in the State of such corporation. The Granite State Association became insolvent and had in the State a large number of mortgages. The Attorney General filed a bill asking for the appointment of a receiver to collect the assets in Michigan and distribute the proceeds pro rata among creditors and stockholders of the Association resident in Michigan, and after the payment of their claims in full, to turn over the remainder of the assets to the Association, or the receiver of the insolvent corporation appointed by the courts of the State at its domicile. In that case the Circuit Court of Appeals held, upon the authority of *Blake vs. McClung*, that this statute was repugnant to Section 2 of Article 4 of the Constitution of the United States. In the opinion in that case, the learned Judge undertakes to distinguish it from the case at bar, as the same was decided by the Supreme Court of Wisconsin, by falling into the error, very natural from the opinion of the Wisconsin Court, that in the case at bar the Association was required, before entering the State of Wisconsin to do business, to make a deposit with the State Treasurer, but as we have shown from the

Record, (and as also appears from the statement of facts made by the Wisconsin Court, but not from the opinion) the association was doing business in the State before and at the time of the enactment of this law.

The logical distinction and the one which we think is made by this Court in the case of *Blake vs. McClung*, between the Tennessee statute and the laws of many of the States requiring foreign insurance companies as a condition of their entering a State for purposes of business, to deposit with a State officer funds to secure policy holders in that State, is, that in the latter, compliance with the law is made a condition precedent to doing business in the State, and in the former, it is not. The Tennessee statute provides a rule by which the property of an insolvent foreign corporation shall be distributed, which, in giving a preference to local creditors, this Court held, gave privileges and immunities to citizens of Tennessee which were denied to citizens of other States. The laws requiring foreign insurance companies to make a deposit to secure local policy holders and creditors, have been upheld upon the ground that they were regulations for the government of foreign corporations, made as a condition precedent to the corporations be ing permitted to do business in the State. If this is the correct distinction, then so far as the Wisconsin shareholders in the case at bar, who were such before the enactment of the Wisconsin law, are concerned, this case comes within the rule of *Blake vs. McClung*.

We respectfully submit that this Court should reverse the judgment of the State Court in this case.

EUGENE G. HAY,

CHARLES H. VAN CAMPEN,

Attorneys for Plaintiff in Error.

No. 151.

Br. of Erdal for D. C.

Supreme Court U. S.
FILED
DEC 28 1900
JAMES H. McKENNEY,
Clerk.

Filed Dec. 28, 1900.

SUPREME COURT OF UNITED STATES,

OCTOBER TERM, 1900

No. 151.

WILLIAM D. HALE, AS RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE DISTRICT COURT OF HENNEPIN COUNTY, MINNESOTA, PLAINTIFF IN ERROR,

vs.

L. V. LEWIS, THE TREASURER OF THE STATE OF WISCONSIN, AND M. C. CLARKE, RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE CIRCUIT COURT OF DANE COUNTY, WISCONSIN, DEFENDANTS IN ERROR.

BRIEF OF M. C. CLARKE, RECEIVER AND DEFENDANT IN ERROR.

JOHN L. ERDAL,
Attorney for M. C. Clarke,
Defendant in Error.

1828

(17,552.)

Supreme Court of United States,

OCTOBER TERM, 1900.

No. 151.

WILLIAM D. HALE, AS RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE DISTRICT COURT OF HENNEPIN COUNTY, MINNESOTA, PLAINTIFF IN ERROR,

vs.

L. V. LEWIS, THE TREASURER OF THE STATE OF WISCONSIN, AND M. C. CLARKE, RECEIVER OF THE AMERICAN SAVINGS AND LOAN ASSOCIATION, APPOINTED BY THE CIRCUIT COURT OF DANE COUNTY, WISCONSIN, DEFENDANTS IN ERROR.

BRIEF OF M. C. CLARKE, RECEIVER AND DEFENDANT IN ERROR.

STATEMENT OF FACTS.

This case comes to this court upon a writ of error to the Supreme Court of Wisconsin to correct certain alleged errors of the latter court in rendering final judgment in an action therein pending between these same parties.

The American Building & Loan Association was organized as a mutual building and loan association in the State of Minnesota on the 15th day of April, 1887. Its name was afterwards changed to the American Savings & Loan Association without affecting its corporate rights. The business to be transacted by the association, according to its articles, is such as is ordinarily transacted by building and loan associations. (Record, p. 78.)

The government and management of the association is vested in its board of directors (Record, p. 78), and this board is expressly authorized to enter into such contracts and agreements and appoint such agents for its business as it may deem for the best interests of the affairs of the corporation. (Record, p. 84.)

The first law enacted by the legislature of Minnesota relating to building and loan associations is Chapter 236 of the General Laws for 1889. It required, among other things, every building and loan association theretofore or thereafter incorporated under the laws of that state to deposit with the State Auditor, or with a duly chartered trust company, certain securities in trust for its members and creditors, and also authorized such associations whenever required by the laws of any other state to deposit with some officer of such other state the securities taken in such latter state in trust for the benefit of its members and creditors. (Record, pp. 63-64.)

This law was amended by the legislature of Minnesota in the year 1891. This amendment, among other things, provides:

"That whenever required by the laws of any other state, territory or nation, all securities taken in such

state, territory or nation by an association organized under the laws of this state and subject to the provisions of this act, and *other securities* sufficient to allow such association to enter and do business in such state, territory or nation, may be deposited with some officer authorized to receive the same in such state, territory or nation under the laws thereof to the benefit of its members and creditors." (Record, p. 66.)

The latter law also provides for the manner of withdrawing securities deposited in Minnesota in excess of the amount required to be deposited there for the purpose of making deposits in other states, etc. (Record, p. 66.)

It is conceded that this association carried on its business in Wisconsin until on or about the 10th day of May, 1889, without making any deposit in Wisconsin, no such deposit being required, and that prior to such time about one hundred and sixty-two (162) persons residing in Wisconsin had become members thereof.

That on the 19th day of April, 1889, the legislature of Wisconsin duly enacted a law which provided that

"No foreign building and loan association shall issue its shares, receive moneys or transact any business in this state unless such association shall have and keep on deposit with the state treasurer of Wisconsin in trust for the benefit and security of its members in this state the securities of the actual cash value of $100,000.00 of the kind mentioned in Section 2 of this Act, to be approved and accepted by said state treasurer and held in trust as aforesaid until all shares of such association held by residents of this state shall have been fully redeemed and paid off by such association and until its contracts and obligations to persons and members residing in this state shall have been fully performed and discharged," etc.

It is also admitted, that for the purpose of complying with the Wisconsin law on or about the 1st day of May,

1889, the Board of Directors of said association adopted the following resolutions:

"Resolved, That the State Treasurer of Wisconsin be made a depository of the association for temporary convenience in complying with the laws of Wisconsin in regard to the deposit of securities, $100,000."

"Resolved, That the association comply with the Wisconsin law as soon as possible." (Record, pp. 70-71.)

That the association immediately thereafter applied for a license to do business in Wisconsin pursuant to the Wisconsin law and that a deposit of securities belonging to the association in the amount of $100,000 was made by the officers of said association.

Some of the securities deposited with the State Treasurer of Wisconsin were afterwards withdrawn, for the convenience of the association, and other securities deposited in lieu thereof. (Record, pp. 67, 68, 69.)

That during the succeeding five years the association continued to transact business in Wisconsin under licenses duly issued to it by said state, enjoying whatever benefits resulted from such continuation of its business and increasing its membership in Wisconsin to the number of eighty-four (84). (Record, pp. 59 and 71.)

After the association had been declared insolvent and a receiver appointed in Minnesota, an action was commenced in the Circuit Court for Dane County by L. V. Lewis, a member residing in Wisconsin, against the Treasurer of Wisconsin and said association, praying for the appointment of a receiver to take charge of and distribute the securities on deposit in that state, the face value of which securities then amounted to $145,234.00. (Record, pp. 26 and 67.)

That plaintiff in error duly applied for and was granted

leave to interpose an answer in said action, and did interpose an answer and counterclaim therein. (Record, pp. 54-57-59.) To said counterclaim, said Lewis interposed a demurrer. This demurrer was, by order of said circuit court, sustained and M. C. Clarke, defendant in error, appointed receiver for Wisconsin. An appeal was thereupon taken from the order sustaining said demurrer by the present plaintiff in error to the Supreme Court of Wisconsin. On this appeal all the questions which are now raised were argued and submitted, except the claim that the Wisconsin statute is in conflict with section 2 of article 4 of the Federal Constitution.

The order of the lower court was affirmed by said Supreme Court and the grounds are fully stated in the opinion rendered at said time. (Record, p. 166.)

We quote the following from this opinion to indicate the ground upon which the decision rests, so far as the federal questions are concerned:

"It was enough that the securities were, as it is conceded, the property of the corporation, and that its directors, who deposited them for the purpose indicated, had power 'to enter into such contracts and agreements as they might deem for the best interest of its affairs.'"

* * *

"It was within the power of the directors to determine upon and make the intended extension of the business of the corporation; and it was their duty and within their power as well to make the necessary deposit of its securities as required by the Wisconsin law, which was a condition precedent to the right of the corporation to obtain the desired license and transact its business in Wisconsin. In any view that may be taken of the case, we think that the transaction was within the undoubted power of the corporation. The deposit was made accordingly. The license was issued. The de-

fendent entered the state and carried on its business therein and for a period of five years derived the benefits and advantages expected to result from such extension of its business and the protection and authority of the state. It was well understood by the corporation, its directors, officers and members that these securities had been deposited, and had so remained with the state treasurer, under the pledge specified in the Wisconsin statute, and until financial disaster and insolvency overtook the corporation. It could enter the State of Wisconsin and carry on its business, only on complying with the terms and conditions of the Wisconsin statute. Having the right to extend its business, it seems clear that it was not ultra vires the corporation to comply with the conditions upon which alone it could lawfully obtain a license to so enter the state and carry on its business, the prosecution of which was for the common advantage and profits of the corporation and of all its members and shareholders." * * *

"The corporation, defendant, as well as its stockholders and its receiver appointed by the court in Minnesota, are estopped from disputing the validity of the trust upon which the state treasurer had received these securities and held them when the corporation became insolvent and this action was commenced. The corporation, by its directors, consented to and made the deposit and their action became binding alike on members and stockholders in other states; and they have thus waived all right, on legal or constitutional grounds to question the validity of the trust on which the securities are held, as expressed in the statute." * * *

"Whatever the practical result of the enforcement of the trust in favor of Wisconsin shareholders, creditors, and other sustaining contractual relations with the corporation defendent may be, it rests, as we think and as we hold, upon the consent of the corporation and of its shareholders lawfully given, as it well might be in the present case, by and through its board of directors, for a valid consideration received by the corporation to the benefit and advantage of those now denying its validity." (Record, pp. 178 to 187.)

The case was then remanded to the Circuit Court for Dane County, where the order sustaining the demurrer was made final, the plaintiff in error electing to stand upon his counterclaim. He then again appealed to the Supreme Court of Wisconsin from the judgment last mentioned and said judgment was thereupon again affirmed by the latter court.

On the second appeal, plaintiff in error for the first time raised the objection that the Wisconsin law was also in conflict with Section 2 of said Article 4, of the Constitution. The Supreme Court of the state delivered but a short opinion on this second appeal, the material part of which is as follows:

"It is unnecessary to restate the grounds upon which the counterclaim was held insufficient. They will be found fully stated in the former opinion which may be regarded as expressing our present views, and for those reasons the present judgment must be affirmed." (Record, p. 165.)

As counsel correctly state in their brief, two questions are presented on this writ of error; one is jurisdictional, the other goes to the merits. As to the jurisdictional question we contend that the judgment of the Supreme Court of Wisconsin is based upon an independent ground not involving a federal question which is sufficiently broad to sustain such judgment. That, therefore, the writ of error must be dismissed, since this court is without jurisdiction to review such judgment.

As to the questions going to the merits we contend that the Wisconsin law is not in conflict either with Section 2, of Article 4, or Section 10 of Article 1, of the Federal Constitution.

ARGUMENT.

I.

THE QUESTION OF JURISDICTION.

The judgment of the Supreme Court of Wisconsin is based upon an independent, non-federal ground, sufficiently broad to sustain it. This Court, therefore, is without jurisdiction to review said judgment and the writ of error must be dismissed.

The rule is well settled in this court that when the judgment of the State Court sought to be reviewed is based upon an independent non-federal ground sufficiently broad to sustain it, this court is without jurisdiction and will dismiss the writ.

Eustis vs. Bolles, 150 U. S. 361.

In this case the court say on page 363:

"The defendants in the trial court depended upon a discharge obtained by them under regular proceedings under the insolvency statute of Massachusetts. This defense the plaintiff met by alleging that the statutes under which the defendants had procured their discharge had been enacted after the promissory note sued on had been executed and delivered and that to give effect to a discharge obtained under such subsequent laws would impair the obligation of a contract within the meaning of the Constitution of the United States. Upon such a state of facts it is plain that a federal question decisive of the case was presented. * * * * The record, however, further discloses that William T. Eustis, represented in this court by his executors, had accepted and receipted for the money which had been awarded him as his portion under the insolvency proceedings, and that the court below conceding

that his cause of action could not be taken away from him without his consent by proceedings under statutes of insolvency passed subsequently to the vesting of his rights, held,—that the action of Eustis in so accepting and receipting for his dividend in the insolvency proceedings was a waiver of his right to object to the validity of the insolvency statutes and that accordingly the defendants were entitled to judgment. * * * * But in deciding that it was competent for Eustis to waive his legal rights and that accepting his dividend under the insolvency proceedings was such a waiver, the court below did not decide a federal question. Whether that view of the case was sound or not it is not for us to inquire. It was broad enough in itself to support the final judgment without reference to the federal question."

The rule laid down in this case is no longer open to question, since it has been expressly and unqualifiedly approved in the following subsequent decisions of this court:

Rutland Railroad Co. vs. Central Vermont Railroad Co., 159 U. S. 630.
Seneca Nation vs. Christy, 162 U. S. 283.
Bacon vs. Texas, 163 U. S. 207.
Egan vs. Hart, 165 U. S. 188.
Electric Company vs. Dow, 166 U. S. 489.
Pierce vs. Somerset Railroad Co., 171 U. S. 641.
Harrison vs. Morton, 171 U. S. 38.
Chappell Chemical Co. vs. Sulphur Mines Co., 172 U. S. 465.
White vs. Leovy, 174 U. S. 91.

The Supreme Court of Wisconsin did not find it necessary to pass upon either of the federal questions raised in this action, but based its decision, so far as material to this inquiry, wholly upon an independent, non-federal ground. The state court found in substance

that the board of directors of this association was duly authorized to act for it and its members in respect to the making of the deposit required by the Wisconsin law; that said board of directors duly consented to, and duly made, the required deposit; that upon compliance with said law a license was duly and annually issued to said association by the State of Wisconsin and that said association for a period of five years enjoyed the benefits and advantages of carrying on business in and the protection of said state, and held,—that said association and its members had therefore waived all right to question the validity of said law on constitutional grounds and were estopped therefrom. In other words, the decision is predicated upon the independent, non-federal ground of waiver and estoppel.

That a person or corporation may waive constitutional rights, such as those invoked in this case, namely, those designed for the protection of property rights, is too well settled to admit of controversy.

Cooley on Constitutional Limitations, 6th Ed., p. 214.

Pierce vs. Somerset Railway Co., 171 U. S. 641.

This being true, it necessarily follows that the ground upon which the state decision rests is broad enough to support it without regard to these federal questions. If the plaintiff in error, or those whom he represents, have waived the right to object to this statute on constitutional grounds, and are now estopped from so doing, it is self evident that such waiver and estoppel dispose entirely of the constitutional objections here interposed. Under such circumstances, it becomes immaterial to determine, so far as the right decision of

this action is concerned, whether originally such objections were valid or not. This court has frequently so decided under similar circumstances. The following are some of the cases which so hold:

Eustis vs. Bolles, 150 U. S. 361.
Electric Co. vs. Dow, 166 U. S. 489, p. 490.
Pierce vs. Somerset Railway Co., 171 U. S. 641–648.
Adams County vs. Burlington and Missouri Railroad Co., 112 U. S. 123.
Baupre vs. Noyes, 138 U. S. 397, p. 402.

But counsel argue that it is the duty of this court in every instance to determine whether the decision of the state court as to the independent ground is sound or not. Otherwise, he suggest the appellate jurisdiction of this court in cases of this kind will be rendered nugatory.

On the contrary, the rule is well settled that if the independent ground upon which the judgment of the court is based is *broad* enough to sustain it, this court will not inquire into the *soundness* of the decision of the state court with respect to such independent ground.

The 25th Section of the Judiciary act of 1789 limited the jurisdiction of the Supreme Court of the United States over decisions rendered by the State Courts to questions arising under the Constitution, statutes or treaties of the United States and concluded with the following language:

"But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid than such as appears on the face of the record, and immediately respects the before mentioned questions of valid-

ity or construction of said constitution, treaties, statutes commissions or authorities in dispute."

While this section was in force the Supreme Court of the United States uniformly held that it had no jurisdiction to examine into the soundness of a decision of a state court upon a non-federal ground, if such non-federal ground was broad enough to support the judgment.

In 1867, Congress passed an act to amend the Judiciary Act of 1789 (now embodied in Section 709, Revised Statutes, 1874).

14 Stats. at Large, 365.

The second section of this latter law was a reproduction with some changes of the 25th Section of the Act of 1789. The material change, so far as the question under consideration, being the omission from the latter law of the language just quoted.

Following this amendment, came the decision of Murdock vs. City of Memphis, 20 Wallace, 590. In the latter case it was claimed that under the Act of 1867 the existence of a federal question gave this court jurisdiction of the whole case, and that under such circumstances it was incumbent upon this court to decide all issues involved, non-federal as well as federal. After the case had been argued, the Supreme Court ordered a re-argument of the case and notified any counsel of that court interested to submit oral or written arguments. The question which was re-argued is as follows:

"Is it the true intent and meaning of the act of 1867, above referred to, that when this court has jurisdiction of a case by reason of any of the questions therein mentioned, it shall proceed to decide all of the ques-

tions entered in the record which are necessary to a final judgment or decree."

After a very full presentation and argument participated in also by eminent attorneys not directly interested in the case, the majority of the court came to the conclusion that the question just above stated should be answered in the negative.

Justice Miller, speaking for the court, says on page 635:

"Why should a judgment be reversed for an error in deciding the federal question if the same judgment must be rendered on the other points in the case? And why should this court reverse a judgment which is right on the whole record presented to us; or where the same judgment will be rendered by the court below after they have corrected the error in the federal question? We have already laid down the rule that we are not authorized to examine these other questions for the purpose of deciding whether the state court ruled correctly on them or not. We are of opinion that on these subjects not embraced in the class of questions stated in the statute, we must receive the decision of the state court as conclusive.

But when we find that the State Court has decided the federal question erroneously, then to prevent a useless and profitless reversal which can do the plaintiff in error no good and can only embarrass and delay the defendant, we must so far look into the remainder of the record as to see whether the decision of the federal question alone is sufficient to dispose of the case or to require its reversal; or on the other hand whether there exist other matters in the record actually decided by the state court which are sufficient to maintain the judgment of that court, notwithstanding the error in deciding the federal question. In the latter case the court would not be justified in reversing the judgment of the State Court.

But this examination into the points in the record other than the federal question is not for the purpose of determining whether they were correctly or erroneously

decided, but to ascertain if any such have been decided, and their sufficiency to maintain the final judgment as decided by the state court."

This rule adopted in the Murdock case after such careful consideration, has since been frequently and uniformly followed by this court.

In Chouteau and another vs. Gibson, 111 U. S. 200, the State Court placed its decision upon the ground that the identical matters involved in that suit had been decided in favor of Gibson in another action between the same parties. This court said:

"It is conceded that the State Supreme Court in deciding the case, sustained this defense, and rendered the decree now here for review in favor of Gibson on that ground alone, without considering any of the other questions involved. * * * Such being the case it is clear we have no jurisdiction and the legal effect of the judgment set up in bar is a question of general law as to which the decision of the State Court is not reviewable here. The federal questions, if any there were in the case, lay behind this defense and could not be reached until it was out of the way."

Adams County vs. Burlington & Missouri R. R. Co., 112 U. S. 123, and

Chapman vs. Goodnow, 123 U. S. 540,

recognize and approve the same rule.

In Brooks vs. Missouri, 124 U. S. 394, page 400, this court, speaking of the decision of the State Court as to the independent ground, say:

"That part of the decision is certainly not repugnant to any provision of the Constitution or laws of the United States, and it is of itself conclusive. It was fairly presented and necessarily involved in the case. It disposed of the supposed constitutional question presented in the argument, without a direct decision, upon a ground which cannot be reviewed by us and which was not evasive merely, but real. * * * Such being the

case, the decision of the alleged Federal question was not necessary to the judgment rendered and consequently is not sufficient to give us jurisdiction."

In Hale vs. Akers, 132 U. S. 554, the litigation involved the title to certain lands in Sonomo County, California. The Federal question related to the construction of a grant made by the Mexican governor prior to California becoming a part of the Union, in pursuance of which a patent was subsequently issued by the U. S. Government. The State Court passed upon the Federal question, but also found that an agreement had been entered into between the owners of the land that was conclusive of the controversy, irrespective of the Federal question. On page 564, the court say:

"In Murdock vs. City of Memphis, 20 Wal. 590, 636, this court announced as one of the propositions which flowed from the provisions of the seventh section of the Act of February 5, 1867, 14 Statutes, 386, embodied in section 709 of the Revised Statutes of 1874, and still in force, that even assuming that a Federal question was erroneously decided against the plaintiff in error, the court must further inquire whether there was any other matter or issue urged by the State Court which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised as to the Federal question, and that if that is found to be the case the judgment must be affirmed without inquiring into the soundness of the decision on such other matter or issue. This principle has since been repeatedly applied * * * the writ of error is dismissed."

In Beaupre vs. Noyes, 138 U. S. 397, p. 402, this court uses the following language:

"The State Court evidently intended to hold that even if the assignment was originally fraudulent, as against the creditors, by reason of Young remaining in the store as clerk for Winchester and assisting the latter in carrying on the business, it was competent for the

plaintiff in error to waive the fraud and treat the assignment as valid for all the purposes specified in it. That view does not involve a Federal question. Whether sound or not, we do not inquire. It is broad enough in itself to support the final judgment without reference to the Federal question, and for that reason the judgment must be affirmed."

And in Eustis vs. Boles, 150 U. S. 361, this court said (as we have already indicated) page 368:

"In deciding that it was competent for Eustis to waive his legal rights and that accepting his dividend under the insolvency proceeding, was such a waiver, the court below did not decide a Federal question. Whether that view of the case was sound or not, it is not for us to inquire. It was broad enough in itself to support the final judgment, without reference to the Federal question.

To the same effect see also:

McLaughlin vs. Fowler, 154 U. S. 663.
Rutland Ry. Co. vs. Central Vermont Ry. Co., 159 U. S. 630.
Seneca Nation vs. Christy, 162 U. S. 283.
Bacon vs. Texas, 163 U. S. 207.
Eagan vs. Hart, 165 U. S. 188.
Electric Co. vs. Dow, 165 U. S. 489.
Pierce vs. Somerset, 171 U. S. 641.
Harrison vs. Morton, 171 U. S., 38.
Chappel Chemical and F. Co. vs. Sulphur Mines Co., 172 U. S. 465.
White vs. Levy, 174 U. S. 91.

It is evident, therefore, that in such cases, the jurisdiction of this court is limited to the decision of Federal questions. That when a decision of a State Court is based upon an independent non-federal ground, this court is only authorized to inquire whether the inde-

pendent ground is broad enough to sustain the judgment. That inquiry being answered in the affirmative, this court has no further jurisdiction. It cannot inquire into the soundness of the decision with respect to the independent ground. That is a question, now, as before, exclusively for the determination of the State Court.

The results which would follow the adoption of the rule contended for by counsel, are obvious. It would vastly increase the jurisdiction of this court. It would impose upon this court the duty of passing upon all non-federal grounds sufficiently broad to sustain a state judgment, whenever a Federal question should be raised. In short, it would do away entirely with the rule defining the boundary between the jurisdiction of this court and that of state courts in such cases. Heretofore, there has been maintained a reasonably plain and definite rule in that respect. To this court has been assigned the final determination of the Federal questions which may be raised, and to the State Courts, the determination of all other questions. This rule, after the most careful and mature deliberation, has been deduced from the terms of the present judiciary act itself and it has been sanctioned, affirmed and re-affirmed in numerous decisions of this court, as we have already shown.

Surely we are justified in believing that under these circumstances, and at this late day, this court will not materially depart from this rule.

The case of Given vs. Wright, 117 U. S. 648, is not in conflict with our position.

The court, in the Given case, did not, as a matter of fact, examine into the soundness of the independent ground relied upon by the State Court. The independ-

ent ground relied upon was that of acquiescence by a land owner for a period of sixty (60) years in the imposition of certain taxes, the state court having held that such acquiescence raised a presumption that the right of exemption from taxes had been surrendered. As we understand it, this court, in the Given case, simply considered the independent ground sufficiently to determine whether or not acquiescence for such a period would create such a presumption, and would be sufficient to sustain the judgment of the state court, and not whether the facts in the case justified the state court in finding that there had been such acquiescence for such period. The latter proposition was not disputed. This is made clear by the reference in the Given case to the Murdock case. So far as the question here under consideration is concerned, the decision in the Given case rests exclusively and expressly upon the sixth proposition laid down in the Murdock case.

This proposition reads as follows:

"If it (referring to the federal question) is erroneously decided against plaintiff in error, then this court must further inquire whether there is any other matter or issue adjudged by the state court which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised by the federal question. If this is found to be the case, the judgment must be affirmed without inquiring into the soundness of the decision on such other matter or issue."

Nor is the case of McCullough vs. Virginia, 172 U.S. 102, in conflict with the rule in the Murdock case to which we have called attention. In the McCullough case, the real issue was whether or not the Supreme Court of Virginia had given effect to subsequent stat-

utes which it was claimed had impaired the contract obligation of a previous statute.

In its decision the state court did not expressly refer to any of said subsequent statutes. The majority of this court held, however, that it was the duty of this court to inquire and determine for itself whether or not effect had been given to such subsequent statutes, and upon such inquiry the majority of this court decided that effect had been given as claimed, and hence, this court assumed jurisdiction. The assumption of such jurisdiction clearly comes within the purview of the Judiciary Act. It is necessarily involved in the decision of the *federal question* itself. How can this court determine whether or not the obligations of a contract have been impaired by a subsequent statute without determining whether or not effect has been given to such subsequent statute?

Counsel, in this connection, also call attention to a number of cases, involving the impairment of the obligations of a contract, in which this court has examined and determined for itself whether or not the statute or instrument, as the case might be, constituted a contract, and if so, what was included within the terms of such contract.

A determination of such question is also of course involved in the determination of the *federal question* itself. This court cannot decide whether a contract has been impaired by a subsequent law, unless it has jurisdiction to determine whether or not a contract exists which may be impaired and it clearly cannot determine the obligations of a contract without deciding what is included within the terms of such contract. These cases,

it seems, clearly have no bearing upon the issues in this case.

Counsel also contend that the federal questions involved were controlling and formed part and parcel of the independent ground relied upon, and therefore, this court must take jurisdiction and decide the issues in the case.

The validity of the state decision with reference to the independent ground depends entirely upon the question whether or not the association had waived or estopped itself from objecting to the validity of this law.

The Wisconsin court held that the Board of Directors was authorized to make the deposit; that its action in that respect was binding upon the association and that the making of such deposit was a waiver of the right of the association to object to the validity of the law. The soundness of the state decision in this respect depends entirely upon the question of whether or not the board of directors had such authority; that the board attempted to exercise this authority cannot be disputed; that the association and its members have waived their right to object to the validity of this law, assuming such authority to be vested in said Board, is likewise not to be disputed. The question whether the board had such authority depends entirely upon the proper construction to be given to the Minnesota statutes and the articles and by-laws of this association. This question of construction is to no extent involved with or dependent upon the federal questions raised. Its determination depends entirely upon the scope and meaning of said statutes, articles and by-laws. It is a question of statutory construction simply.

The Wisconsin court also held that the association and its members were estopped from raising any objection to this law. The soundness of the state decision in this respect depends upon the effect to be given to the acts of officers, upon the knowledge of such acts to be imputed to the members and upon the injustice, if any, which would result to the State of Wisconsin and the members residing therein if this association or its members at this late day and under the circumstances of this case should be permitted to object to the validity of the law.

These are two questions of general law in no way connected with or dependent upon the federal questions raised. They are questions which the state court could decide and rightly and fully decide without passing upon the merits of the federal questions at all.

Let us in this connection apply a test which would appear to be conclusive. Suppose the state court had decided the federal questions in favor of the plaintiff in error holding that the state law was in conflict with Section 10, of Article 1, and also in conflict with Section 2, of Art. 4 of the Federal Constitution. Assume further that after so deciding the state court had held that the association and its members had waived the right and were estopped from objecting to the validity of this law because of the facts shown in this record, would this court have assumed jurisdiction? Would it under such circumstances have undertaken to pass upon the merits of the decision of the state court with respect to the ground of waiver and estoppel? Clearly not. If not, then it is equally clear that this court ought not to pass upon the merits of the non-federal ground in this case.

Counsel also claim that the decision of the state court

as to the independent ground is a mere statement with nothing in the record to support it. If this were true this court would probably be justified in taking jurisdiction on the theory that the decision of the state court as to the independent ground was a mere subterfuge to evade review by this court in a proper case. But is it true? We insist that ample grounds were presented to the state court upon which to predicate in good faith the contention that this association and its members had waived the right on constitutional grounds to object to the Wisconsin law and were estopped from so doing.

In considering this branch of the case we must of course take into account the specific facts that are set up in the counterclaim bearing upon these questions and not merely the general allegations contained therein to the effect that the action of the directors was unlawful and that the members had no knowledge thereof and were therefore not estopped, etc.

The facts disclose that the government and management of this corporation and its affairs were vested under its articles in a board of directors; that this board of directors was fully authorized to enter into such contracts and agreements as it might deem for the best interests of the association; that the articles and statutes of Minnesota relating thereto recognized the right of this and like associations to transact business in other states. It is evident from the articles, by laws and statutes that it was contemplated this association would transact business in other states. From these facts the presumption would ordinarily arise that the association had a right to do whatever might be found necessary in order to carry on business in other states. Moreover, the Minnesota statutes expressly authorized such as-

sociations to deposit with officers in other states such securities as might be necessary in order to enjoy the privilege of transacting business in such other states. Under these circumstances the conclusion of the State Court that the board of directors had authority to make this deposit would seem to be well founded.

The rule is well settled that members of a corporation will be presumed to have knowledge of the authority conferred by the statutes, charter and by-laws relating to such corporation. Any action of the board of directors, therefore, taken pursuant to such authority is binding upon the association and its members. Immediately after the enactment of the Wisconsin law, the board of directors duly resolved to comply with the law. It made the deposit required by the law. It applied on behalf of the association for the license issued by the state pursuant thereto. It accepted this license which could only be issued in consideration of this deposit, and without which the association could not continue its business in Wisconsin.

Pursuant to such license, the association transacted business in said state for a period of five years, greatly increasing its membership and presumably enjoying whatever advantages could result from such continuance and extension of its business. In other words the association and its members received and enjoyed the whole consideration for this deposit. From these facts, it appears that the conclusion of the State Court that the association and its members had waived the right to object to the validity of this law and are estopped therefrom, is also well founded. Moreover the State court found that the association, its officers and members had knowledge of the making of this deposit,

and this finding is supported by the facts set up in the counterclaim. The officers of course had actual knowledge of it since it was by and through them that the deposit was made. The members under the circumstances must be presumed to have knowledge. They were chargeable with knowledge of the original charter and by-laws.

Brent vs. The Bank of Washington, 10 Peters 556.

1 Thomp. Corp., § 941.

5 Am. & Eng. Ency. of L., p. 100 (2d ed.).

They were also chargeable with knowledge of the amendments to that charter affected by the Minnesota statutes to which we have referred, and they were moreover chargeable with knowledge of the general rule of law, that states, other than Minnesota, in which this association was transacting business might impose such conditions and exact such securities as they might see fit in consideration of such right to transact business. Having knowledge, therefore, of such charter and said statutes the members must be presumed to have known that this association was authorized to transact business in other states and that it was authorized to deposit in said other states such securities as might be required. They had actual knowledge of the fact that the association was transacting business in many states, since the members themselves are residents of thirty-five different states. Under the by-laws it was the duty of the secretary to keep full and accurate minutes of the doings of the Board of Directors. (R. p. 84.)

The resolutions adopted by the Board of Directors

looking toward the compliance with the Wisconsin law were of course spread upon the records of the association. Securities were from time to time withdrawn from Minnesota for the purpose of depositing the same in Wisconsin. A record thereof was made pursuant to said Minnesota statutes. (R., pp. 66-67-105 to 109 inclusive.) There were annual meetings of the stockholders of which meetings all members received due notice. (R., p. 84.)

It is certainly fair to presume that at such meetings so important a matter as the deposit of this large amount of securities in Wisconsin was made known to the stockholders, and if it was not actually made known, the members might readily have ascertained the fact from the records of the association and the public records kept pursuant to the Minnesota statutes.

Under these circumstances if the members did not have actual knowledge of the making of the deposit they certainly had knowledge of such facts as ought to have put them upon inquiry, and if inquiry had been made the facts might have been readily ascertained.

It is not even claimed that any of the members of this association objected to the validity of the Wisconsin law or to the making of the deposit required by it, prior to the appointment of Mr. Clarke as receiver. They continued their memberships during all the years that this association transacted business in Wisconsin, and enjoyed to the fullest extent advantages resulting from the transaction of such business in Wisconsin. To permit these members now to object to the validity of this law would clearly be inequitable and unjust so far as the Wisconsin members are concerned. The State Court was, therefore, justified in holding that the mem-

bers were estopped from questioning the validity of this law even if the directors in the first instance did not have authority to comply with it.

Certainly no further argument can be necessary to demonstrate that the independent ground assigned by the state court was not a mere pretense, but was made in good faith and upon sufficient grounds.

Counsel also contend that the state court did not decide that the association and its members had waived the right or were estopped from objecting to the validity of this law as being in conflict with Section 2 of Article 4 of the Constitution, and hence, that this constitutional objection must be decided upon its merits.

We submit that the contention of counsel in this behalf is erronous for two reasons:

First. Because the reasons assigned by the state court for waiver and estoppel with respect to the objection made under Section 10, of Article 1, apply with equal force to the objection made under said Section 2, of Article 4.

Second. Because the decision of the state court overruling the objection under said Section 2, was *in fact* placed upon the *same grounds*.

The state court had very fully and explicitly on the first appeal assigned its reasons for holding that the association and its members had waived this right and were estopped from raising the objection under said Section 10. When the matter came before the supreme court of the state on the second appeal an objection was made to the validity of the law by reason of its alleged conflict with said Section 2, the state court overruled this objection, together with those previously made and affirmed the judgment of the lower court.

With respect to its reasons for so doing, the court expressly say:

"They (the reasons) will be found fully stated in the former opinion, which may be regarded as expressing our present views, and for those reasons the present judgment must be affirmed." (Record, p. 165.)

We contend, therefore, that the decisions of the state court is based upon an independent non-federal ground sufficient to support it; that said independent ground being sufficiently broad to sustain the judgment and supported by facts so as to preclude the idea of bad faith on the part of the state court, this court has no authority to inquire into the soundness of the state decision in respect to such independent ground. The latter question is one exclusively for the state court to pass upon and its decision in that respect is conclusive. We submit, therefore, that this writ should be dismissed.

II.

IS THE WISCONSIN LAW OF 1889 REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES?

1. Does it impair the obligation of the shareholder's contract?

"The term 'contract' is used in the Constitution in its ordinary sense, as signifying the agreement of two minds having considerations proceeding from one to the other to do or not to do certain acts. Mutual assent to its terms is of its very essence. * * * * * The prohibition of the Federal Constitution was intended to secure the observation of good faith in the stipulations of parties against any state action. Where

a transaction is not based upon any assent of the parties, it cannot be said that any faith is pledged with respect to it and no case arises for the operation of the prohibition."

Louisiana vs. Mayor, etc., 109 U. S. 285.
Garrison vs. New York, 21 Wall. 203.
Freeland vs. Williams, 131 U. S. 405.

Did the members of this association enter into any *contract* within the meaning of that term as above defined to the effect that they would in the event of the insolvency of the association share all losses equally? Did they mutually assent to any such proposition? Did they even contemplate any such contingency? The qualification of membership and the manner of acquiring membership are provided for in the by-laws of the association. Section 1, Article 1, provides:

"Any person may become a member of this association by making a written application for membership therein and paying the admission fee, and subscribing for one or more shares of its capital stock, provided, that such application shall be accepted and approved by the Board of Directors. Section 2: To every person who has complied with the requisites for membership and whose application has been accepted and approved by the Board of Directors, shall be issued a certificate of stock bearing the signatures of the President and Secretary," etc.

The shareholders' contracts, therefore, as counsel correctly states, are evidenced by the certificates of stock issued by the association. In order to ascertain the nature of the contract entered into and of the obligations assumed by the member, we must therefore look primarily to the terms of the certificate of stock.

There is no material difference in the certificates of stock issued by this association, so far as the questions

here considered are concerned. Each certificate contains the following language:

"This certificate is issued to and accepted by the holder thereof upon the following express terms and conditions:"

Then follow the ten sections contained in each certificate.

The first section provides in substance, that the shareholder shall monthly pay to the association sixty cents for each share, until such share matures or is withdrawn. The second section designates the place and manner of paying such dues. The third section establishes the proportion of such dues to be paid into the loan fund and the expense fund. The fourth section establishes the fine to be paid in the event of the nonpayment of dues at the time agreed upon. The fifth section provides for a sale of the certificates of stock of a member who is in default for a period of six months or more. The sixth section prescribes the manner of transferring such shares of stock. The seventh section provides for a reduction in the number of shares held by any member, and in such event the application of the payments previously made upon a new certificate to be issued. The eighth authorizes a withdrawal of the shares of stock held by any member prior to maturity and fixes the amount to be paid to such member and the manner of payment. The ninth provides for an apportionment once in three months among the shares in good standing of the profits, and directs that if losses occur they shall be deducted from undivided profits so far as possible; any deficiency to be charged up to the shares in force, and declares that all shares shall be deemed matured whenever the monthly payments on

such shares, together with the profits apportioned to it amount to one hundred dollars, and authorizes the directors to require the withdrawal of matured shares. The tenth section is as follows:

"No agent has authority to change this contract in any way; and the association assumes no obligation for any statements not contained in its printed literature." (Record, p. 122; Printed Case, 102, 103, 104.)

If we assume, as counsel contends, that the statutes of the state under which this association was organized, its articles of incorporation and by-laws are to be construed in connection with and to be taken as part of the shareholders' contract, we shall find that no material change in said contract will be effected thereby.

We have here then contracts which are reduced to writing or to printed form. They appear to be definite and complete and to state fully the rights and obligations of the members. In fact, said contracts are expressly limited to the terms and conditions contained in said certificates, and the agents who must necessarily transact all business for the association and with the members thereof, are expressly prohibited from assuming any obligation not in accordance therewith. So far as the shareholders' contracts are concerned, it is perfectly clear that the members have no right to any return from the moneys contributed by them to the association, except in the event of the withdrawal of the stock before maturity or upon its payment at maturity. It is also perfectly clear that every stipulation entered into and every obligation assumed, whether by the association or its members, was unquestionably based upon the assumption that the association would continue transacting its business until every share of stock

had either been matured or withdrawn. So far as we have been able to ascertain, not a single word or provision was inserted in said statutes, articles of incorporation, by-laws or certificates upon any other theory.

Every provision contained in said statutes, articles, by-laws and certificates relates to a solvent association. Insolvency is not even suggested. It seems to us absolutely certain that when the members of the association entered into their respective contracts they never contemplated such a thing as the insolvency of the association and the impossibility of its being able to carry out the object of its organization. Everything tends to show that all the parties concerned fully believed that the stock issued by this association and not withdrawn would be matured, and that when this time arrived the members would receive back the moneys paid in by them together with all profits realized in the business. Certainly so far as these contracts are concerned *they made no stipulation and assented to no proposition based upon any other theory or contingency.*

If we are correct in the view which we have taken of the shareholders' contracts, the Wisconsin Statute is certainly not subject to the Constitutional objection raised against it. It simply requires that the deposit made with the State Treasurer shall be held by him in trust.

"Until all shares of said association held by residents of this state (Wisconsin) shall have been fully redeemed and paid off by the said association and until its contracts and obligations to persons and members residing in this state shall have been fully performed and discharged."

The evident purpose and sole effect of this statute is to secure the full performance of the contract entered

into between the association and persons residing in this state. Had the association been able to carry out these contracts, the securities deposited with the State Treasurer would have been delivered back to said association in precisely the same condition as when deposited.

The obligations of the members to pay losses equally and to share pro rata in the assets of the association are not dependent upon their contracts.

The insolvency and appointment of a receiver has necessarily put an end to the operations of this this association. The whole scheme upon which its shareholders' contracts were made to depend and the sole purpose for which they were entered into has collapsed and become impossible of realization. The association can no longer receive from its members their small monthly payments. It can no longer invest and re-invest the funds of the association. It is impossible now for any of said members to exercise their rights of withdrawal. The duty to make stock payments no longer exists; the stock can never be matured. In fact, the stock itself is destroyed and the shareholders' membership must die with the corporation. It has become impossible in any respect to carry out the shareholders' contracts. It is, therefore, evident that the association cannot be wound up on the theory of carrying out such contracts.

The plaintiff in error, by order of the courts of Minnesota, has been appointed receiver of this association and has taken possession of its assets. The members have filed their claims with him based upon the amounts

contributed by them to the capital stock of the association. How are these assets to be distributed?

Unquestionably upon *purely equitable principles* without reference to these contracts which have become impossible of performance. The members of this association have all contributed to its capital stock in certain proportions. They have or would have shared mutually in any profits growing out of its business. In proportion to the contributions to the capital stock they stand upon a footing of perfect equality and mutuality. The association being insolvent and there being no outside creditors the members are of course the owners of the assets. In the absence of any contract to that effect these members are entitled to a proportionate share of the assets after the payment of all losses and expenses. This is but the application of a well recognized maxim of equity ordinarily applied in marshalling the assets of insolvent corporation, namely, that *equality is equity*.

1 Pomeroy's Equity Jurisprudence, Secs. 407–410–411–412.

It is upon this theory and not upon the theory of enforcing the shareholders' contracts that this association and similar associations are being wound up. Speaking of this subject, the supreme court of Minnesota has said:

"The original scheme has totally failed and can be carried out in scarcely any particular. The members can no longer withdraw in the manner provided by the by-laws. * * * * * * The stock can never be matured and the members have no right to be repaid in the order of which the stock of each would have matured if the scheme was successful and had been carried through. Then in winding up such a corporation, we can see no principle upon which to proceed in

adjusting matters between it and its members, except the principle of rescission so far as the same can be equitably and justly applied."

Knutson vs. Northwestern Loan & Bldg. Ass'n, 69 N. W. Rep. 889.

The supreme court of Wisconsin has used the following language:

"Thus it seems that as the corporation is defunct, membership ceases and all contracts must therefore of necessity be set aside. It is upon the theory of rescission and abrogation of the contracts that equity steps in and winds up its affairs and makes a ratable distribution of assets. * * * * * * The association being insolvent, nothing remains to be done but to wind up its affairs so as to do equity between the creditors and between the members themselves."

Leahy vs. Fat. Bldg. & Loan Ass'n, 100 Wis. 555, pp. 568, 569.

And the Supreme Court of Pennsylvania has spoken as follows:

"When a building association has failed to fulfill the object of its creation and has become hopelessly insolvent, it cannot be justly or equitably wound up on any other principle than that suggested. After expenses incident to the administration of its assets are deducted, the general creditors, if any, should be first paid in full, and the residue of the fund should be distributed pro rata among those whose claims are based upon stock of the association whether they have withdrawn and hold orders for the withdrawal value thereof or not. Both classes are equally meritorious, and in the marshalling of the assets neither is entitled to priority over the others. The claims of each are alike based upon their relation to the association as members thereof." Christian's Appeal, 102 Pa. St. 184.

See also:

Wilcoxen vs. Smith (Ia.), 78 N. W. Rep. 217, p. 219.

Strohen vs. Franklin S. F. & L. Association, 115 Pa. St. 273.
Curtis vs. Granite State Prov. Ass'n, 69 Conn. 6.
Weir vs. Granite State Prov. Ass'n, (N. J. Ch.) 38 Atl. Rep. 643.
Rogers vs. Hargo, (Tenn.) 20 W. Rep. 430.

The obligation of the members, therefore, to share osses equally is not dependent upon any contract entered into by them, but is dependent upon an equitable principle applied by a court of equity in distributing its assets, the association being insolvent. Hence, the Wisconsin statute, if it does in any respect interfere with the enforcement of this obligation, does not come within the prohibition of the constitutional provision. That provision, of course, only applies to the impairment of the obligation of *contracts*.

But counsel claim that the Wisconsin law is unconstitutional because it impairs the obligations of the contracts entered into between the association and its shareholders for the following reasons:

That it either prevented the collection of monthly dues from members residing in Wisconsin at the time of the enactment of said law or its effect was to relieve such members from the obligation of paying any dues thereafter; and counsel argue that the association by virtue of the contracts entered into with its members was under obligation to collect such dues and that the Wisconsin members last mentioned were under obligation by virtue of their contracts to pay such dues.

There may be some question as to whether the association ever assumed any contract obligation to collect any dues from its members. We find no provision im-

posing any such obligation upon the association. However that may be, it seems perfectly clear that the Wisconsin members might have continued making their payments to the association and the association might have continued receiving the same had no deposit pursuant to the Wisconsin law ever been made.

Turning again to the certificates of stock, we notice that Section 2 provides, that

"All moneys due from members to the association or due from the association to members shall be due and payable at the home office in Minneapolis, Minnesota." (R. p. 123.)

The by-laws of the association to be sure, provide for the organization of local boards, and in such event, authorize the making of monthly payments to the local treasurer, but upon the express condition that such local treasurer shall be deemed the agent of the members and not of the association. (R. p. 85.)

It is evident, therefore, that the business of paying monthly dues and the receiving of the same under the terms of said contracts, was to be transacted at the home office at Minneapolis, Minnesota. Suppose, then, that the association had made no deposit under the Wisconsin law. Would the Wisconsin law in any way have interfered with the payment and receipt of such dues? If the association by reason of such contracts was under any obligation to collect such dues, it certainly was under no obligation to do so in Wisconsin, or transact in Wisconsin any business in that behalf.

The members, as indicated, had expressly agreed to make such payments at Minneapolis. The contracts referred to do not specify the manner; but naturally the members would be obliged to make such payments in

person or by agent at Minneapolis, or in person or by agent they would have to remit such dues to the home office through the mails or otherwise.

Does the prohibition in the Wisconsin law cover any such case? It provides, that

"*No foreign building and loan association* shall issue its shares, receive moneys or transact any business *in this state.*"

We submit that the making of such payments by the Wisconsin members in the manner indicated or the receipt of such payments by said association as suggested, cannot be construed as the transaction of any business *by said association in the State of Wisconsin.*

This, we think, is so clear from the language of the Wisconsin law itself as to require no further argument. We refer the court to the following authorities in support of this contention, however:

Eastern Building & Loan Assn. vs. Bedford, 88 Fed. R. 7.

Caesar et al. vs. Capell et al., 83 Fed. R. 403.

United States vs. American Bell Telephone Co. et al., 29 Fed. R. 17.

Swan vs. Mutual Reserve Fund Life Assn., 100 Fed. R. 922.

Bamberger vs. Schoolfield, 160 U. S. 149.

Allgeyer vs. Louisiana, 165 U. S. 578.

Counsel also argue that the Minnesota statute, which prohibits building and loan associations from issuing preferred stock, entered into the contracts of the association with its members; that the Wisconsin statute as construed by the Wisconsin court, makes the stock of the Wisconsin members preferred, since it gives them a preferential interest in the securities deposited

in Wisconsin, and hence, that it impairs the obligation of said contracts. The certificates of stock issued to the Wisconsin members were precisely like the certificates issued to all other members. (R. p. 72.) In no respect do they purport to give the Wisconsin members any preference. Nor have the Wisconsin courts ever claimed, much less decided, that the Wisconsin members are entitled to any preference by virtue of the character of the stock held by them.

If the Wisconsin members ultimately realize more proportionately on their claims than do the other members, it will be because the assets of the Wisconsin receiver, in proportion to the claims filed with him, are greater than are the assets in the hands of the Minnesota receiver. This result plainly will be in no way dependent upon the nature of the certificates held by Wisconsin members.

Moreover, the terms "preferred stock" are evidently used in the Minnesota statute in their ordinary meaning. Counsel have assigned no reason to the contrary. These words have a definite and fixed meaning in the law. Preferred stock means simply stock which entitles the holder to receive *dividends* from the *earnings* of a corporation before the common stock can receive any such dividends. A dividend is money paid out of *profits*. A holder of preferred stock is not a creditor, but simply a shareholder. Hence, upon the dissolution of an insolvent corporation, there being no profits to divide, the holder of preferred stock is entitled to no priority over common stockholders.

Cook on Stock and Stockholders, Vol. 1, 3rd Ed., secs. 267, 271 and 278.

St. John vs. Erie Railway Co., 22 Wall. 136.

The Wisconsin law does not impair the obligations of the contracts of the association since its operation and effect upon such contracts, if any, is made to depend upon the assent of the association.

Speaking of the right of a foreign corporation to transact business in a state other than that of its creation, this court said, as early as 1868, in the leading case of Paul vs. Virginia, 8 Wall, 168, 181,—

"The corporation being the mere creation of local law can have no legal existence beyond the limits of the sovereignty where created. * * * The recognition of its existence even by other states and the enforcement of its contracts made therein, depend purely upon the comity of those states. * * * Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

Numerous cases have since been decided by this court approving of the rule here announced and we may safely assert that this rule is now well settled not only in this court but in all the different courts of this Union. The exceptions to the rule which have been established, but which are not material to this inquiry, are fully stated in the leading case of Hooper vs. California, 155 U. S. 648.

The rule is also well settled that a state not only has the right in the first instance to impose such conditions as it may see fit for the privilege granted to a foreign corporation to enter its territory and transact business

therein, but having permitted such foreign corporation to enter its territory, with or without conditions, it may subsequently impose such conditions or such new conditions as it may see fit for the future privilege of transacting business therein, or it may exclude such foreign corporation entirely.

In Home Insurance Company vs. Morse, 20 Wall. 445, this court decided that an agreement entered into by a foreign insurance corporation to abstain from resorting to the courts of the United States was against public policy and that a statute of the state of Wisconsin requiring such an agreement was in conflict with the Constitution of that United States and therefore void. Subsequently the State of Wisconsin revoked the license granted to a foreign insurance corporation which had entered into such an agreement, because it had violated the agreement by removing an action brought against it to one of the federal courts. The right of the State of Wisconsin to revoke such license came before this court in Doyle vs. Continental Insurance Co., 94 U. S. 535, and this court held that the State of Wisconsin had the right to revoke the license and that its motive for so doing was not open to inquiry. The court say on p. 540.

"The correlative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by a state is always revocable. Rector v. Philadelphia, 24 How. 300; People v. Roper, 35 N. Y. 629; People v. Com'rs, 47 N. Y. 501. The power to revoke can only be restrained, if at all, by an explicit contract upon good consideration to that effect. Humphrey v. Pegues, 16 Wall. 244; Tomlinson v. Jessup, 15 Wall, 454. A license to a foreign corporation to enter a state does not involve a permanent right to remain. *

* * * * * * * * * * * * * * * * * *

* The effect of our decision in this respect is that the state may compel the foreign company to abstain from the federal courts, or to cease to do business in the state. It gives the company the option. This is justifiable because the complainant has no constitutional right to do business in that state. That state has authority at any time to declare that it shall not transact business there."

In Philadelphia Fire Ass'n vs. New York, 119 U. S. 110, on pp. 119 and 120, this court, speaking of the same subject, uses the following language:

"The state having the power to exclude entirely, has the power to change the conditions of admission at any time for the future and to impose as a condition the payment of a new tax or a further tax as a license fee. If it imposes such license fee as a pre-requisite for the future, the foreign corporation until it pays such license fee is not admitted within the state or within its jurisdiction. It is outside at the threshold seeking admission with consent not yet given. * * * It could not be of right within such jurisdiction, until it should receive the consent of the state to its entrance therein under the new provisions; and such consent could not be given until the tax as a license fee for the future should be paid.

See also:

Ashley vs. Ryan, 153 U. S. 436, p. 445.

Manchester Fire Ins. Co. v. Herriott, 91 Fed. Rep. 711.

This association entered the state of Wisconsin in the year 1888 and began to transact business therein under the rule of comity there being then no laws in force in Wisconsin governing the admission of such associations.

In 1889, the legislature of Wisconsin enacted the law under consideration. The latter law simply said in effect to this association: If you wish in the future to

continue transacting business in our state you must comply with certain conditions. For the privilege of transacting your business hereafter you must apply for a license and you must make a deposit of certain property in trust for the benefit and security of all of your members in this state, etc.

The State of Wisconsin unquestionably had the right to enact such a law, and it is equally clear that thereafter this association had no further authority to transact business in Wisconsin without complying with this law. But compliance with this law was not made imperative upon the association. The association was not compelled by virtue of this law to make the deposit required unless it desired to exercise in the future the right to transact business in Wisconsin. Whether or not, therefore, the deposit should be made was entirely optional with the association itself. (This is certainly true bearing in mind the proposition that the association was in a position to carry out fully and freely all contracts previously entered into by it with its members without any further transaction of business in Wisconsin.)

In this connection a very good test suggests itself as to whether or not this law impaired the obligations of the membership contracts. Suppose upon the enactment of the Wisconsin law the officers of the association had decided that the prospective benefits which might result from carrying on business in Wisconsin did not justify them in making this deposit and the association had thereupon withdrawn from the state, could the Wisconsin law in that event have been enforced as against this association or its members to any extent?

It seems to us perfectly clear that this inquiry must be answered in the negative. In short, it is evident that this law could go into effect and operation so far as this association is concerned only upon the assent of the association itself. This assent would, of course, be evidenced under the law by the association voluntarily applying for a license and by making the required deposit. This law, therefore, in and of itself does not effect any change or modification in the contracts of this association. If any such changes or modifications are made they depend, so far as this law is concerned, upon the assent of the association. Such a law does not impair the obligation of contracts.

Cooley in his celebrated work on Constitutional Limitations, 6th Ed., p. 215, says, speaking of such laws:

"In these and the like cases the statute must be read with an implied proviso that the party to be affected shall assent thereto; and such consent removes all obstacles and lets the statute in to operate the same as if it had in terms contained the condition."

The language used by the Supreme Court of Wisconsin in Burrows vs. Bashford, 22 Wis. 103, with respect to a statute similar in principle to the one under consideration is very apt. On p. 107, the Court say:

"The only remaining question, therefore, is whether these provisions as applied to such prior deeds, are unconstitutional. The plaintiff claims that they are, and that they impair the obligation of his contract.

It may readily be conceded that the legislature could not make such provisions imperative as to such prior deeds, and apply them in actions to which the owner was previously entitled. This would impair the obligations of the contract, as this court has held in the cases cited by the plaintiff. * * * But whether they could not provide a new remedy, giving the owners of such deeds new rights and privileges which they did not

before have, and declare that as a condition to the enjoyment of these the owners should subject their deeds to certain new defenses to which they would not otherwise have been subject is an entirely different question. * * * In such a case no right of the owner is interfered with. If he chooses not to avail himself of the new remedy he can resort to the old, and insist upon all his old rights without any change or diminution. It is entirely optional with him, whether he will resort to the new. But if he does he takes it subject to its conditions. * * * It would only have been unconstitutional for the legislature to impose them on the plaintiff without his consent. It was not unconstitutional for them to say that he might voluntarily subject himself to them, as conditions to the enjoyment of a new advantage given by the act."

After commenting upon the decisions from certain state courts, the Wisconsin court proceeds upon page 109:

"Our view of the character of this act is also confirmed by the decision of the Supreme Court of the United States in Van Allen vs. The Assessors, 3 Wall. 573. The court there held the provision of the National Banking Act, subjecting Federal bonds to state taxation when used as a basis for banking, valid, notwithstanding the bonds had been issued under a law exempting them from state taxation. * * * And they put it upon the ground that the act conferred new rights and privileges upon the bondholders and that the tax was the condition to those new rights and privileges. True, it was not claimed there that the act was unconstitutional, because there is no provision prohibiting Congress from passing a law impairing the obligations of contracts. But it was claimed that it was a violation of the plighted faith of the government. And the court held that it was not for the reason above stated, and it is obvious that the same reasoning shows that it was not a law impairing the obligation of contracts."

In the Pennsylvania College cases, 13 Wall. 190, pp. 213, 214, this court had under consideration legislation

which modified the charters of certain incorporated colleges. The court there uses this language:

"Subsequent legislation altering or modifying the provisions of such a charter where there is no such reservation is certainly unauthorized if it is prejudicial to the rights of the corporators and was passed without their assent. But the converse of the proposition is also true that if the new provisions altering and modifying the charter were passed with the assent of the corporation and they were duly accepted by a corporate vote as amendments to the original charter, they cannot be regarded as imparing the obligations of the contract created by the original charter."

As bearing upon this question, we also beg leave to refer to

Mumma vs. Potomac Co., 8 Pet. 281, p. 286;
Denny vs. Bennett, 128 U. S. 489;
Manchester Fire Ins. Co. vs. Herriott, 91 Fed. Rep. 711.

For the reasons assigned, we submit that the Wisconsin law is not invalid on the ground that it impairs the obligations of contracts.

THE WISCONSIN LAW IS NOT IN CONFLICT WITH SECTION 2, OF ARTICLE 4, OF THE CONSTITUTION OF THE UNITED STATES.

1. Section 2, of article 4, of the constitution of the United States has no application to the association since it is not a citizen within the meaning of this provision. The association is a legal entity, and so far as any transaction of the association is concerned, the members thereof can no more invoke this constitutional provision than can the association itself.

The claim is made that the Wisconsin law grants

privileges and immunities to the members of the association who are citizens of Wisconsin, which are denied to the members who are citizens of other states. It being conceded that the association has no creditors aside from its members and that in this proceeding the plaintiff in error represents only the association and its members.

It is well settled that this constitutional provision has no application to a corporation, since a corporation is not a citizen within the meaning of the provision.

Paul vs. Virginia, 8 Wall. 168.

Ducat vs. Chicago, 10 Wall. 410.

Liverpool Ins. Co. vs. Massachusetts, 10 Wall. 566.

Pembina C. S. M. & M. Co. vs. Pennsylvania, 125 U. S. 181.

Norfolk West R. Co. vs. Com. of Pa., 136 U. S. 114.

Blake vs. McClung, 172 U. S. 239.

It necessarily follows that the members of this association cannot invoke this provision so far as any transaction of the association is concerned.

In the leading case of Paul vs. Virginia, 8 Wall. 168, the Court had under consideration a statute of Virginia, which required a foreign insurance corporation to obtain a license and to deposit with the State Treasurer, as security for its engagements, bonds of a specified character and amount. The statute further provided that no person should act as an agent of any such corporation without being licensed, and imposed a penalty for the violation of this provision. Paul applied for a license as agent for several companies incorporated in

New York. The license was refused because the companies in question had not made the deposit required by the State law. Paul was arrested and convicted for transacting business as such agent without being licensed. The judgment of conviction having been affirmed in the state court, was removed to this court on writ of error, Paul claiming that said statute was in conflict with said Section 2, of Article 4, aforesaid.

The court say on page 179:

"The answer which readily occurs to the objection founded upon the first clause consists in the fact that corporations are not citizens within its meaning. The term 'citizen' as there used, applies only to natural persons, members of the body politic, owing allegiance to the state, not to artificial persons created by the legislature and possessing only the attributes which the legislature has prescribed. * * * *

In Bank of Augusta vs. Earle, 13 Pet. 586, the question arose whether a bank incorporated by the laws of Georgia, with a power, among other things to purchase bills of exchange, could lawfully exercise that power in the State of Alabama, but it was contended, as in the case at bar, that a corporation composed of citizens of other states was entitled to the benefit of that provision, and that the court should look beyond the act of incorporation and see who were its members for the purpose of affording them its protection, if found to be citizens of other states, reference being made to an early decision upon the right of corporations to litigate in Federal courts in support of the position, but the court after expressing approval of the decision referred to (Bank of U. S. vs. Devereaux, 5 Cranch 61) observed that the decision was confined in express terms to a question of jurisdiction; that the principle had never been carried further and that it had never been supposed to extend to contracts made by a corporation, especially in another sovereignty from that of its creation. That if the principle were held to embrace contracts, and the members of a corporation were to be regarded as indi-

viduals carrying on business in the corporate name, and, therefore, entitled to the privileges of citizens, they must at the same time take upon themselves the liabilities of citizens, and be bound by their contracts in l ke manner; that the result would be to make the corporation a mere partnership in business with the individual liability of each stockholder for all the debts of the corporation. * * * * * Whenever a corporation makes a contract, it is the contract of the legal entity, the artificial being created by the charter, and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character and not the rights which belong to its members as citizens of a state."

The principle which must control in such a case as this, is well stated in 2 Morawetz Priv. Cor. § 973.

"The corporate association is clearly not in fact or in law a citizen of the state by which it is chartered, and therefore, is not entitled to rights accorded by the Constitution to the citizens of the State. The individual shareholders or members of a corporation are undoubtedly citizens; and are entitled to the rights and immunities of citizens; *but it results from the character of the corporate or collective rights of the shareholders or members, that their individual citizenship may as a rule be disregarded in considering these rights.*"

The requirement of the Wisconsin law was imposed upon *foreign building and loan associations.* The requirement was made simply as a condition precedent to the right of such corporations to transact business in Wisconsin. It is plain that so far as this objection is concerned and as applied to the association, the law was valid and binding. If it was binding upon the association, was it not necessarily binding upon the members of the association? The deposit was a corporate transaction and so far as it affected the rights of the members, affected them simply in their corporate and collective rights. The fund deposited belonged to the

association, that is, to the members collectively, and the benefits anticipated from a continuance of the business in Wisconsin would accrue to the association or to its members collectively. No distinction, therefore, so so far as this transaction is concerned can be made between the association and its members. Regard can only be had to the association as a legal entity. The condition being valid as against the association was equally so as applied to its members.

Morever, let us consider what would be the result if this were not true. What would become of the well recognized right of the state to impose conditions upon foreign corporations. In the language of the Virginia case, the states

"May exclude a foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest."

Paul vs. Virginia, 8 Wall. 168.

So far but two limitations upon the absolute power of the state in such cases has been established. First. Where the business has derived its being from an act of congress and has become a lawful agency for the performance of governmental or quasi-governmental functions. Second. Where it is necessarily an instrumentality of inter-state commerce or its business constitutes such commerce.

Hooper vs. California, 155 U. S. 648.

If the requirements imposed by the several states upon foreign corporations could not be made binding as against the members of such corporations, would the imposition of such conditions have any force whatever?

If one or any number of the members of this association could or can now object to the validity of this law on account of their individual citizenship, then it is perfectly plain that it was a useless ceremony to attempt to impose the condition at all. The condition in order to have any force whatever must necessarily be binding upon the members as well as the association, and this rule we think is to be gathered from the decisions of this court.

In Horn Silver Mining Co. vs. New York, 143 U. S. 305, on page 315, the court uses the following language:

"Having the absolute power of excluding the foreign corporation, the state may, of course, impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient; and it may make the grant of privileges dependent upon the payment of a specific license, tax or a sum proportioned to the amount of its capital. *No individual member of the corporation* or the corporation itself can call in question the validity of any exaction which the state may require for the grant of its privileges."

2. Moreover, the Wisconsin law does not present any question of discrimination against citizens within the purview of this constitutional provision.

It will be noticed that the Wisconsin law made it a condition of the right of this association to continue its business in Wisconsin, that it deposit with the State Treasurer securities of the value of $100,000. The deposit was thereupon made with said Treasurer expressly in trust for the security of the contracts and obligations o the association to its *members residing in Wisconsin*. If the Wisconsin members therefore secure any advantage on the distribution of the assets of this association,

it is due to the fact that these securities were expressly and specifically deposited and held in trust for them.

The other members do not stand in the same relation to the securities deposited with the State Treasurer as do the Wisconsin members. The Wisconsin members have a specific lien on these securities; the other members do not. Hence, there is no discrimination within the purview of this constitutional provision.

It is to be noted that the Tennessee statute considered in the case of Blake vs. McClung, 172 U. S. 239, did not require of a foreign corporation as a condition precedent to its right to do business in that state, that it make a special deposit in trust for the security of residents in that state. On the contrary, the Tennessee statute provided in substance that when a foreign mining corporation should become insolvent *that its general assets might be taken and distributed among resident creditors to the exclusion of creditors who are citizens of other states.*

The Wisconsin statute very clearly comes within the exception so carefully stated by this court in the Blake case. On page 257 the court say:

"It may be appropriate to observe that the objections to the statute of Tennessee do not necessarily embrace the enactments that are found in some of the states requiring foreign insurance corporations, as a condition of their coming into the state for the purposes of business, to deposit with the State Treasurer funds sufficient to secure policy holders in its midst. Legislation of that character does not present any question of discrimination against citizens forbidden by the constitution. Insurance funds set apart in advance for the benefit of home policy holders of a foreign insurance company doing business in the state are a trust fund of a specific kind to be administered for the exclusive benefit of certain persons."

The Michigan statute held invalid in Maynard vs. Granite State Provident Association, and others, 92 Fed. Rep. 435, was similar to the Tennessee statute and is distinguishable from our statute for like reasons. The court in the latter case also calls attention to the exception to the rule laid down in the Blake case, and expressly approves of the decision of the Wisconsin court here under consideration, page 441:

"So in this case had the legislation of Michigan provided that as a condition of the defendant association's doing business in the state of Michigan, it should deposit a fund with the state treasurer or other state officer, to be used for the security of resident stockholders or creditors of the state of Michigan, such a provision would not have been in violation of the 4th Article of the Federal Constitution. * * * Such, indeed, was the character of the legislation adjudged to be valid in the case of Lewis vs. Association, 98 Wis. 203; 73 N. W. Rep. 793, where a foreign building association was required by the law of Wisconsin to deposit $100,000 of its securities with the State Treasurer in trust for the redemption of the obligations of the association to persons residing in Wisconsin. Those obligations including the payment of shareholders in the building association."

The fact that this association was transacting business in Wisconsin prior to the enactment of the law in question is not material to this issue. It had no right to continue such business. For the privilege of continuing it, the State had a right to impose such conditions as it saw fit, with certain exceptions which are not material here. This is evident from the rule laid down in Paul vs. Virginia, 8 Wall. 168, and Hooper vs. California, 155 U. S. 648, and cases therein cited.

The Wisconsin law, therefore, is not in conflict with Section 2, of Article 4, of the Federal Constitution.

In conclusion, we respectfully submit that if the writ herein be not dismissed for want of jurisdiction, the judgment of the State Court be affirmed.

JOHN L. ERDALL,
Attorney for M. C. Clarke,
Defendant in Error.

Supreme Court of the United States.

No. 151.—October Term, 1900.

William D. Hale, Plaintiff in Error, vs. Ledyard V. Lewis et al. } In error to the Supreme Court of Wisconsin.

[May 13, 1901.]

This was a petition filed by Lewis, as subscriber for five shares of stock in the American Building and Loan Association, in the circuit court for Dane County, against the American Savings and Loan Association, the treasurer of the State of Wisconsin, and William D. Hale, receiver of the association, (subsequently admitted as defendant,) to compel the securities of this association, held in trust by the State treasurer, to be sequestrated and distributed among the members and stockholders who are residents of the State of Wisconsin, and for an injunction and receiver as adjuncts to such relief.

The facts of the case as disclosed by the complaint, answer and counterclaim are substantially as follows:

The American Building and Loan Association was originally incorporated under the laws of Minnesota, April 15, 1887, with its principal office at Minneapolis, where it continued to transact its corporate business until June 26, 1892, when its name was changed to the American Savings and Loan Association, without in any way affecting or altering its corporate rights. The general nature of its business was declared to be "to assist its members in saving and investing money, and in buying and improving real estate, and in procuring money for other purposes, by loaning or advancing under the mutual building society plan, to such of them as might desire to anticipate the ultimate value of their shares, funds accumulated from the monthly contributions of its stockholders, and also such other funds as may from time to time come into its hands." The management of its affairs was vested in a board of seven directors, elected by the stockholders. Membership was acquired by taking stock in the company and paying an admission fee. On July 31, 1888, the association amended its articles by adding thereto that "the board of directors may sell and dispose of the mortgages held by the corporation whenever they may deem best and as provided by the by-laws." But no by-laws were ever passed upon this subject; and on July 11, 1889, the articles of incorporation were

again amended by declaring that "the board of directors shall not sell or dispose of any of the mortgages held or owned by this corporation."

On April 19, 1889, the legislature of Wisconsin enacted a law which provided that—

"No foreign building and loan association . . . shall issue its shares, receive moneys or transact any business in this State unless such association shall have and keep on deposit with the State treasurer of Wisconsin, in trust for the benefit and security of all its members in this State, the securities of the actual cash value of $100,000 of the kind mentioned in section 2 of this act, to be approved and accepted by said State treasurer, and held in trust as aforesaid, until all shares of such association held by residents of this State shall have been fully redeemed and paid off by such association, and until its contracts and obligations to persons and members residing in this State shall have been fully performed and discharged." (Sanford & Berryman's Stats. sec 2014*a*.)

At the time the complaint was filed the association had 246 shareholders in Wisconsin, of whom 162 had become such prior to the enactment of this law; and thereafter, and prior to the appointment of plaintiff in error as receiver, 84 additional residents of the State became shareholders, all under a contract identical with that by which all the shareholders in thirty-four other States became shareholders in the association, and the rights, privileges, immunities and liabilities of every shareholder, whether residing in Wisconsin or elsewhere, were the same.

A few days after the enactment of the above law, and on May 1, 1889, the board of directors adopted the following resolution: "*Resolved*, That the State treasurer of Wisconsin be made a depository of the association for temporary convenience in complying with the law of Wisconsin in regard to the deposit of securities, $100,000. *Also resolved*, That the association comply with the Wisconsin law as soon as possible." Thereafter, from time to time, without other or additional authority, mortgages taken by the association from its members were delivered to the State treasurer in the aggregate face value of $145,234. The shareholders had no knowledge whatever of the delivery of these mortgages to the State treasurer, nor did they consent or acquiesce in that disposition of them.

On January 14, 1896, the association having become insolvent, the plaintiff in error, William B. Hale, was duly appointed receiver by the district court of Hennepin County, Minnesota, under the laws of that State.

Subsequent to the appointment of Hale as receiver, and on February 5, 1896, one Melville C. Clarke was appointed receiver for such association for the State of Wisconsin, by the circuit court of Dane County, and the State treasurer, who was a party to the proceeding, was ordered by the court to turn over all the mortgages in his possession as treasurer, to Clarke as receiver. This was done, and Clarke was proceeding to collect the same

for the purpose of distributing the proceeds to the shareholders residing in Wisconsin.

Prior to the appointment of either of these receivers, however, Lewis filed this petition, to which Hale, the Minnesota receiver, was subsequently made a party defendant. He also filed an answer, praying that the Wisconsin receiver, Clarke, turn over to him the mortgages held by him, to be by him, Hale, collected, and the proceeds equitably distributed to all the shareholders of the association, wheresoever they may reside.

Clarke, the Wisconsin receiver, demurred to the counter-claim set up in the answer of Hale, which was sustained, and an appeal was taken from the order sustaining such demurrer to the Supreme Court, which affirmed the order of the lower court, and remanded the case for further proceedings. Hale, refusing to amend his answer and counter-claim, and electing to stand upon the record, judgment was rendered against him for costs, and from this judgment an appeal was taken to the Supreme Court, which again affirmed the judgment of the Circuit Court. Whereupon plaintiff in error sued out this writ.

Mr. Justice BROWN delivered the opinion of the Court.

While no motion was made to dismiss this case, the question of jurisdiction arising from the alleged want of a Federal question is elaborately discussed by counsel in their briefs, and has received our attentive consideration.

The original complaint by Lewis against the Building and Loan Association and the State treasurer makes no reference to such question, and merely prays for relief under the State statute, and for a distribution of the local assets among the local stockholders. The answer of the State treasurer admits the main allegations of the bill, and apparently accedes to the position of the plaintiff. The answer and counter-claim of Hale, the Minnesota receiver, who was subsequently admitted as defendant, sets up no conflict between the Wisconsin statute and the Federal Constitution, but denies the authority of the association to pledge, transfer or dispose of any of its mortgages, which were delivered to the State treasurer without authority; asserts that the assets of the association, including the mortgages in the possession of Clarke, are not sufficient to pay all the shareholders in full, and that if Clarke, the Wisconsin receiver, shall collect the mortgages in his possession, and distribute the same to the Wisconsin shareholders, they will receive their pay in full, and thereby be constituted a preferred class against equity and good conscience, and contrary to the purposes of the association as defined by its articles; and finally, "that the law under which it is alleged said mortgages were

deposited was intended to protect said Wisconsin shareholders in all their rights growing out of their membership in said association, and not for the purpose of extending, altering or changing said rights; that the purpose for which any deposit made by said association with said State treasurer under said law was made terminated and was at an end when said association became insolvent and incapable of carrying out its contracts and effectuating the purpose of its being."

To this answer and counter-claim Clarke, the Wisconsin receiver, as well as Lewis, the plaintiff, demurred for insufficiency. The demurrer was sustained, and the defendant Hale given leave to amend. Instead of amending, Hale took an appeal to the Supreme Court from the orders sustaining the demurrer.

Upon this appeal the Supreme Court held that the principal question presented was as to the construction, validity and effect of the law of Wisconsin requiring such associations to make a deposit of securities as a condition to doing business, and decided, *first*, that the mortgages in dispute were deposited with the State treasurer by the corporation in a *bona fide* attempt to comply with the Wisconsin law; that it was its duty and within the power of its directors to make such deposits, as a condition precedent to the right to do business in Wisconsin; that the recognition of the existence of a corporation by any other than the State of its creation depends purely upon the comity of such other State or States; that the power to exclude such corporations embraces the power to regulate them, and that this doctrine was conclusive as to the validity of the pledge of the securities in question under the Wisconsin statute, and was also within the power of the corporation, and not in violation of the trust reposed in the board of directors. And, *second*, that whatever the view taken of the rights and relations of the entire body of stockholders as between themselves and the corporation, the contract clause of the Constitution could not be invoked to release these securities from the operation of the statute, as the stockholders had waived their right to insist upon the constitutional objection by the voluntary act of the board of directors in making the deposit with the State treasurer under the statute. Said the court: "Whatever the practical result of the enforcement of the trust in favor of Wisconsin shareholders, creditors and others sustaining contractual relations with the corporation defendant may be, it rests, as we think and as we hold, upon the consent of the corporation and of its shareholders lawfully given, as it well might be in the present case, by and through its board of directors, for a valid consideration received by the corporation to the benefit and advantage of those now denying its validity."

The orders appealed from were affirmed, and the case sent back to the Circuit Court. Hale refusing to amend and electing to stand on the record,

judgment went against him for costs. He appears to have carried the case again to the Supreme Court, and for the first time assigned as error the repugnancy of the statute to the Constitution of the United States. Judgment was again affirmed.

Passing the question whether a party who failed to set up a Federal question in his original pleadings, or upon his first appeal to the Supreme Court, and subsequently declines to amend, and only sets such question up in an assignment of errors on a second appeal, after the question had been practically disposed of by the Supreme Court, does not lay himself open to the objection so often sustained by us that a party cannot raise a Federal question for the first time on a motion for a rehearing, (*Mut. Life Ins. Co.* v. *Kirchoff*, 169 U. S. 103, 113; *Yazoo &c. Ry. Co.* v. *Adams*, 180 U. S. 1,) it is clear that the Supreme Court disposed of the case upon a non-Federal ground broad enough to support the judgment. It held, in substance, that, conceding the law to be unconstitutional, the corporation is estopped to set up its invalidity, by the action of the board of directors in depositing securities with the State treasurer under the Wisconsin statute; that such action was within the power of the board; was binding upon the stockholders, and that such deposit, having been made subject to the condition that the securities shall be held "in trust for the benefit and security of its members in this State, . . . and held in trust as aforesaid, until all shares of this association shall have been fully redeemed and paid off by such association, and until its contracts and and obligations to persons residing in this State shall have been fully performed and discharged," the stockholders as well as the corporation were estopped to claim that such condition was invalid.

The case is completely covered by that of *Eustis* v. *Bolles*, (150 U. S. 361.) This was an action to recover the residue of a note, the holder having received one-half of the amount under certain insolvency proceedings in Massachusetts. Defendants pleaded the proceedings in insolvency, an offer of composition, its acceptance by plaintiff and the receipt of the amount coming to him under the composition. Plaintiff demurred, and insisted that the statute, which has been enacted after the note has been executed, impaired the obligation of his contract. The Supreme Court held that the action of plaintiff in accepting his dividend under the insolvency proceedings was a waiver of his right to object to the validity of the statute. Upon writ of error from this court, we held that, in deciding that it was competent for plaintiff to waive his legal rights, and that accepting his dividend under the insolvency proceedings was such a waiver, the court did not decide a Federal question, and the writ of error was dismissed, citing *Beaupré* v. *Noyes*, (138 U. S. 197.) See also *Electric Co.* v. *Dow*, (166 U. S. 489;) *Pierce* v. *Somerset Railway*, (171 U. S. 641;) *Seneca Nation* v. *Christy*, (162 U. S. 283.)

The case differs from the one under consideration only in the fact that in this case there was a further question whether the waiver was binding not only upon the corporation but upon its stockholders. That question involved the construction of the Minnesota statute, but no Federal right. See also *Moran* v. *Horsky*, (178 U. S. 205,) in which a defense under the laws of the United States was held by the Supreme Court of Montana to have been waived by the laches of the plaintiff. This was also held to be a non-Federal ground sufficient to support the judgment, and the writ of error was dismissed.

The same result must follow in this case, and the writ of error is, therefore,

Dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.